

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**





FILED FEB 3 1961

*Joseph W. Stewart*  
CLERK

JOINT APPENDIX

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,714

295

JAMES H. RANGER,  
WILLIAM R. SINCLAIR,  
and  
ED J. ZUCHELLI,  
d/b as RADIO CABRILLO,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee,

EDWARD E. URNER  
and  
BRYAN J. COLEMAN,  
d/b as CAL-COAST BROADCASTERS,

Intervenor.

Appeal from the  
Federal Communications Commission

UNITED STATES COURT OF APPEALS  
For the District of Columbia Circuit

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JOINT APPENDIX

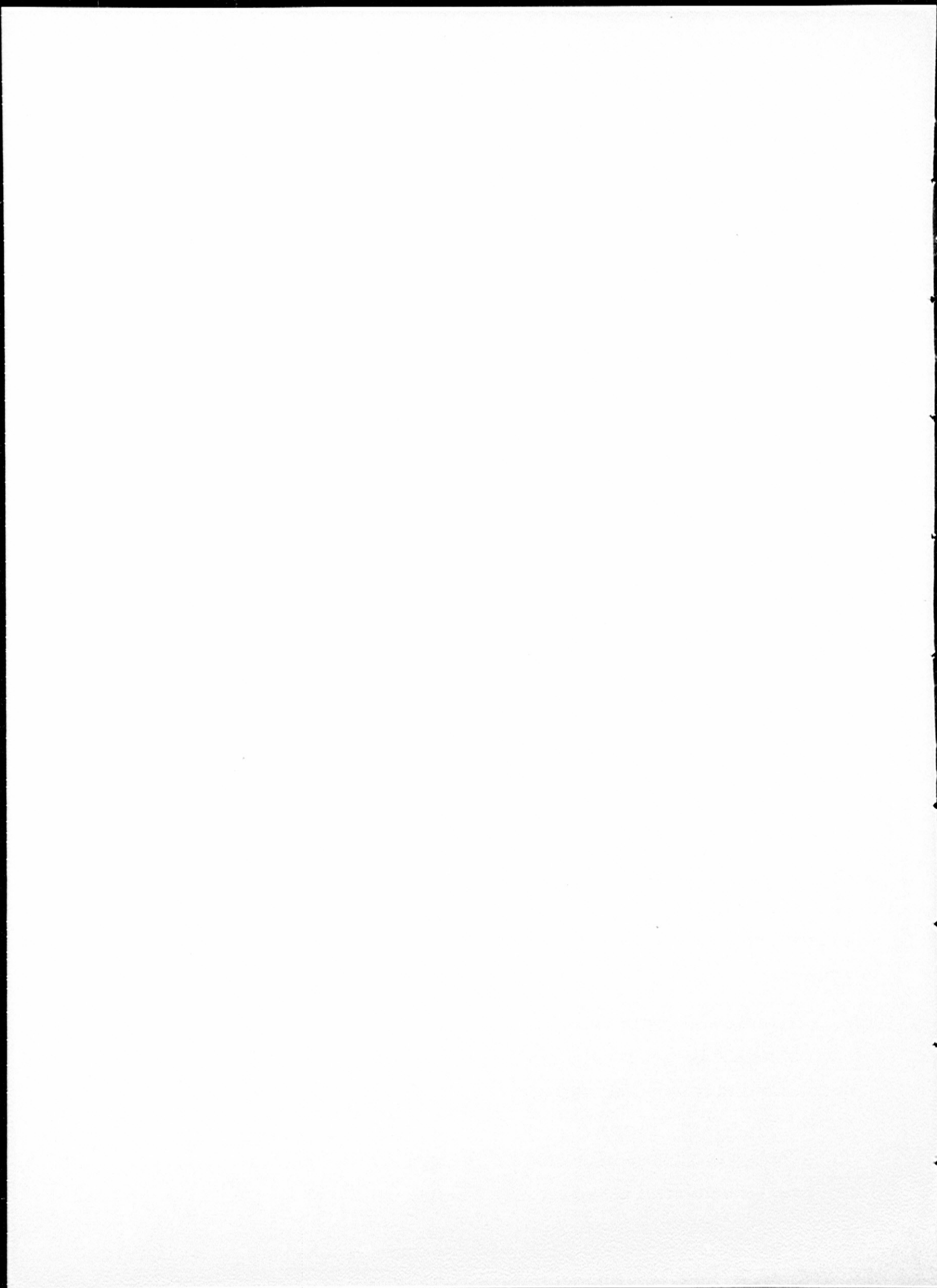
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[ Filed May 4, 1960 ]

UNITED STATES COURT OF APPEALS  
For The District Of Columbia Circuit

\* \* \*  
NOTICE OF APPEAL  
\* \* \*

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[ Filed May 31, 1960 ]

NOTICE OF INTENTION TO INTERVENE  
\* \* \*

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[ 1 ]

Broadcast License Div.

May 7, 1959

8720

James H. Ranger, William R. Sinclair  
and Ed J. Zuchelli d/b as  
Radio Cabrillo  
P. O. Box 166  
Santa Maria, California  
Gentlemen:

Returned herewith is the application for construction permit to erect a new standard broadcast station at Atascadero, California. Upon examination we find it is not acceptable for Commission consideration in its present form.

The application is dated and verified as of April 7, 1959, whereas the financial statement of William R. Sinclair has been signed and verified

[ 1]

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on April 10, 1959. All sections and exhibits must be dated the same date as, or prior to, the date and verification of Section I.

Section I has not been executed according to instructions in Paragraph D of the application form. The names of the partners must appear as shown in the partnership agreement. Also, the partnership agreement is not dated.

In Section II, Table I, column (a), you failed to give home street addresses for all partners. Too, you failed to answer Paragraph 20 and 21 of Section II. All pertinent parts of the application must be answered.

It is requested that a personal Balance Sheet be submitted for Ed J. Zuchelli. Also, the net income for the past two years be submitted for Wm. R. Sinclair.

Your application fails to disclose the schedule of programs for the typical week of your proposed operation. Paragraph 2(b), Section IV, specifically requests that such a schedule be submitted and that there be indicated thereon the class of each program in accordance with with the Program Classification stated on Page 4 of this section. Three copies are necessary.

It is noted that no Exhibit "2", as listed in Section I, page 2, regarding option on land, was received with the application. Instruction C, Section I, requires that all Exhibits be properly numbered.

In accordance with Instruction B, of Section I, it is necessary to file only three copies of the application (two additional copies of Section V-G and Exhibits).

[ 2]

When resubmitting the application, Section I should be sworn to by one of the partners as of a current date. Forms are enclosed for your convenience in refiling.



Very truly yours,

Mary Jane Morris  
Secretary

Enclosures:

Application Form 301 & Exhibits  
FCC Form 301 (3)

Signed by Above  
Mailed by  
May 11 1959  
Mail & Files

cc:

Miss Iehl  
B/C Facilities  
Files  
QSP:nd:B/Lic

[Received May 22, 1959, FCC]

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TYPICAL BROADCAST WEEK . . . MONDAY THRU SATURDAY FOR  
RADIO CABRILLO, ATASCADERO, CALIFORNIA

**PROGRAM LOG FOR RADIO STATION KCOY**  
**Santa Maria, California.**

Date Exhibit 5  
Sheet No.         

| Time | Name of Program     | Sponsor | Classi-<br>fication | Type and<br>Origin | * * * |
|------|---------------------|---------|---------------------|--------------------|-------|
| 5:59 | SIGN ON             |         | LS                  | LV X               |       |
| 6:00 | NEWS                |         | WS                  | LV X               |       |
| 6:05 | EARLY BIRD SHOW     |         | RS                  | ET X               |       |
| 6:30 | WEATHER             |         | WS                  | LV X               |       |
| 6:35 | EARLY BIRD SHOW     |         | RS                  | ET X               |       |
| 6:55 | NEWS                |         | WS                  | LV X               |       |
| 7:00 | CLOCK WATCHERS CLUB |         | RS                  | ET X               |       |
| 7:30 | NEWS (FARM)         |         | LS & WS             | LV X               |       |
| 7:35 | CLOCK WATCHERS CLUB |         | RS                  | ET X               |       |
| 7:45 | NEWS                |         | WS                  | LV X               |       |
| 8:00 | CLOCK WATCHERS CLUB |         | RS                  | ET X               |       |
| 8:25 | WEATHER             |         | LS & WS             | LV X               |       |
| 8:30 | CLOCK WATCHERS CLUB |         | RS                  | ET X               |       |



**PROGRAM LOG FOR RADIO STATION KCOY (Continued)**  
**Santa Maria, California**

| Time  | Name of Program     | Sponsor | Classification | Type and Origin | * * * |
|-------|---------------------|---------|----------------|-----------------|-------|
| 8:55  | NEWS                |         | WS             | LV X            |       |
| 9:00  | MORNING MELODIES    |         | RS             | ET X            |       |
| 9:25  | NEWS                |         | WS             | LV X            |       |
| 9:30  | MORNING MELODIES    |         | RS             | ET X            |       |
| 9:55  | NEWS                |         | WS             | LV X            |       |
| 10:00 | MORNING MELODIES    |         | RS             | ET X            |       |
| 10:55 | NEWS                |         | WS             | LV X            |       |
| 11:00 | MORNING MELODIES    |         | RS             | ET X            |       |
| 12:00 | NEWS ROUNDUP        |         | LS & WS        | LV X            |       |
| 12:15 | FARM NEWS           |         | LS & WS        | LV X            |       |
| 12:30 | MELODY MATINEE      |         | RS             | ET X            |       |
| 12:55 | SPORTS              |         | LS & WS        | LV X            |       |
| 1:00  | MELODY MATINEE      |         | RS             | ET X            |       |
| 1:55  | NEWS                |         | WS             | LV X            |       |
| 2:00  | MELODY MATINEE      |         | RS             | ET X            |       |
| 2:55  | NEWS                |         | WS             | LV X            |       |
| 3:00  | MELODY MATINEE      |         | RS             | ET X            |       |
| 3:55  | NEWS                |         | WS             | LV X            |       |
| 4:00  | MELODY MATINEE      |         | RS             | ET X            |       |
| 4:55  | NEWS                |         | WS             | LV X            |       |
| 5:00  | PUBLIC SERVICE SHOW |         | LS & WS        | LV & ET X       |       |
| 5:15  | Farm NEWS           |         | LS & WS        | LV X            |       |
| 5:30  | SPORTS ROUNDUP      |         | LS & WS        | LV X            |       |
| 5:45  | FINAL EDITION NEWS  |         | LS & WS        | LV X            |       |
| 6:00  | SIGN OFF            |         | LS             | LV X            |       |

SA - Spot Announcement  
 NCSA - Non-Commercial Spot  
 PSA - Public Service Spot  
 RC - Recorded Commercial  
 RS - Recorded Sustaining  
 WC - Wire Commercial  
 WS - Wire Sustaining  
 LC - Local Commercial

LS - Local Sustaining  
 POL - Political  
 ET - Transcription  
 TR - Tape Recorded  
 LV - Live  
 X - Transmitter  
 DS - Downtown Studio  
 REM - Remote

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TYPICAL BROADCAST SUNDAY FOR RADIO CABRILLO,  
ATASCADERO, CALIFORNIA

PROGRAM LOG FOR RADIO STATION KCOY  
Santa Maria, California

Date \_\_\_\_\_  
Sheet No. \_\_\_\_\_

| Time  | Name of Program       | Sponsor | Classi-<br>fication | Type and<br>Origin | * * * |
|-------|-----------------------|---------|---------------------|--------------------|-------|
| 5:59  | SIGN ON               |         | LS                  | LV                 | X     |
| 6:00  | SUNDAY SERENADE       |         | RS                  | ET                 | X     |
| 6:25  | NEWS                  |         | WS                  | LV                 | X     |
| 6:30  | SUNDAY SERENADE       |         | RS                  | ET                 | X     |
| 6:55  | NEWS                  |         | WS                  | LV                 | X     |
| 7:00  | SUNDAY SERENADE       |         | RS                  | ET                 | X     |
| 7:25  | NEWS                  |         | WS                  | LV                 | X     |
| 7:30  | SUNDAY SERENADE       |         | RS                  | ET                 | X     |
| 8:00  | NEWS                  |         | LS-WS               | LV                 | X     |
| 8:15  | SUNDAY SERENADE       |         | RS                  | ET                 | X     |
| 8:55  | NEWS                  |         | WS                  | LV                 | X     |
| 9:00  | SUNDAY SERENADE       |         | RS                  | ET                 | X     |
| 9:55  | NEWS                  |         | WS                  | LV                 | X     |
| 10:00 | SUNDAY SERENADE       |         | RS                  | ET                 | X     |
| 10:55 | NEWS                  |         | WS                  | LV                 | X     |
| 11:00 | SUNDAY CHURCH SERVICE |         | LS-REM              | LV                 | X     |
| 12:00 | NEWS                  |         | WS                  | LV                 | X     |
| 12:15 | HALL OF HITS          |         | RS                  | ET                 | X     |
| 12:55 | NEWS                  |         | WS                  | LV                 | X     |
| 1:00  | HALL OF HITS          |         | RS                  | ET                 | X     |
| 1:55  | NEWS                  |         | WS                  | LV                 | X     |
| 2:00  | HALL OF HITS          |         | RS                  | ET                 | X     |
| 2:55  | NEWS                  |         | WS                  | LV                 | X     |
| 3:00  | HALL OF HITS          |         | RS                  | ET                 | X     |
| 3:55  | NEWS                  |         | WS                  | LV                 | X     |
| 4:00  | HALL OF HITS          |         | RS                  | ET                 | X     |
| 4:30  | SUNDAY CHURCH SERVICE |         | LS-REM              | LV                 | X     |

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**PROGRAM LOG FOR RADIO STATION WCOY (Continued)**  
**Santa Maria, California**

| Time | Name of Program     | Sponsor | Classi-<br>fication | Type and<br>Origin | * * * |
|------|---------------------|---------|---------------------|--------------------|-------|
| 5:00 | PUBLIC SERVICE TIME |         | LS-RS               | LV & ET            | X     |
| 5:15 | PUBLIC SERVICE TIME |         | LS-RS               | LV & ET            | X     |
| 5:30 | SPORTS ROUNDUP      |         | LS & WS             | LV                 | X     |
| 5:45 | WORLD NEWS ROUNDUP  |         | LS & WS             | LV                 | X     |
| 6:00 | SIGN OFF            |         | LS                  | LV                 | X     |

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Radio Cabrillo  
P. O. Box 166  
Santa Maria, California

Broadcast License Div. 81717

In Reply Refer to: 8831

Gentlemen:

Reference is made to your application for a construction permit for a new standard broadcast station at Atascadero, California, File No. BP-13205, requesting operation on 1480 kilocycles, with a power of 500 watts, daytime only.

By Commission letter dated May 7, 1959, your application was returned pursuant to the provisions of Section 1.306 of the Commission's Rules, as not acceptable for filing because of the various deficiencies found in the application. These deficiencies were enumerated in the above said letter.

An application for a new standard broadcast station on 1490 kilocycles in Atascadero, California, was filed by Radio Atascadero on June 9, 1958 and was assigned File No. BP-12068. On April 8, 1959, the Commission gave notice, which was published in the Federal Register, that BP-12068, among other applications, would be considered ready and available for processing on May 16, 1959. Your above-referenced application was resubmitted on May 22, 1959.



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Your attention is directed to Section 1.106 (b)(4) of the Commission Rules which provides that "any mutually exclusive application filed after the close of business on the day preceding the day designated by Public Notice published in the Federal Register as the day any one of the previously filed applications is available and ready for processing, will be dismissed without prejudice and will be eligible for refiling only after a final decision is rendered by the Commission with respect to the prior application or applications or after such application or applications are dismissed or removed from the hearing docket."

In view of the foregoing, your application was not timely filed to be considered with BP-12068 and, therefore, pursuant to Section 1.106 (b)(4) of the Commission Rules, your application is hereby dismissed.

BY DIRECTION OF THE COMMISSION

cc: Miss Iehl

Mary Jane Morris, Secretary

Approved in Commission  
Meeting, Dec. 22, 1959  
Item #10; Aural Agenda

Signed by Above, Mailed by  
Dec. 24, 1959,  
Mail & Files

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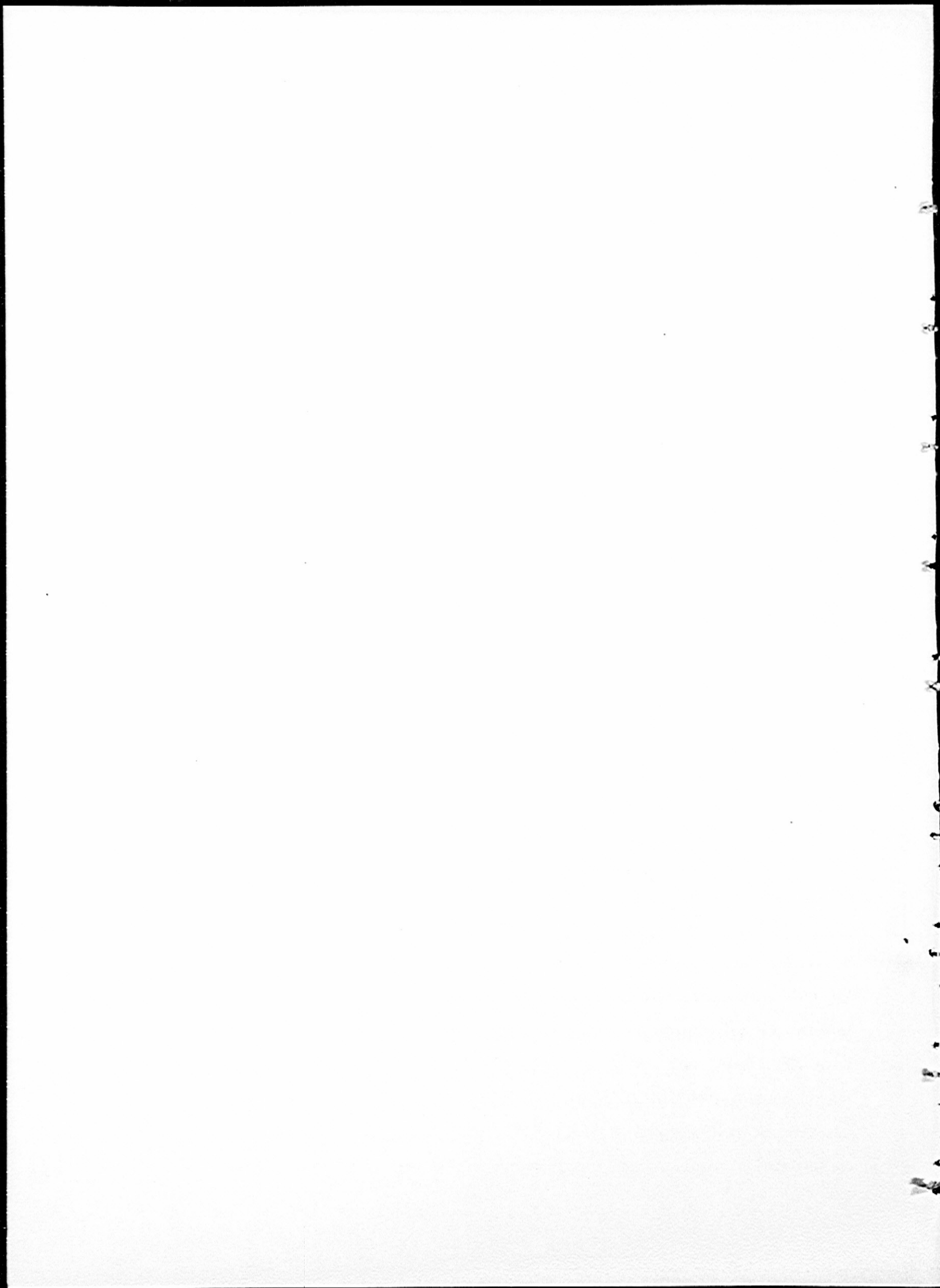
[Received FCC Jan. 18, 1960]

[Received Chief, Hearing Division Jan. 21, 1960]

**PETITION FOR RECONSIDERATION AND REINSTATEMENT  
OF APPLICATION, NUNC PRO TUNC, AS OF APRIL 20, 1959,  
OR MAY 15, 1959, AND FOR OTHER RELIEF**

James H. Ranger, William R. Sinclair, and Ed J. Zuchelli, d/b as Radio Cabrillo, by its attorneys, respectfully requests the Commission to reconsider its action of December 22, 1959, in which the application of Radio Cabrillo was dismissed, and to reinstate the said application as of April 20, 1959, or May 15, 1959, nunc pro tunc. It is further requested that the Commission set aside its order of designation in Dockets Nos. 13330 and 13331. In Support thereof, the following is presented.





Preliminary Statement

1. <sup>1/</sup>On April 20, 1959, Radio Cabrillo filed with the Commission an application requesting authority to construct a new standard broadcast station on 1480 kc, with a power of 500 watts, daytime hours of operation only. That application was signed and sworn to by James H. Ranger, one of the partners of Radio Cabrillo, on April 7, 1959.

2. On May 7, 1959, the License Division prepared a letter to Radio Cabrillo returning the application principally because the balance sheet of one of the partners was dated April 10, 1959, whereas the verification in Section I was dated April 7, 1959. The fact that the application was returned because of the problem with the dates is substantiated by the Commission's release of May 14, 1959, which stated that the basis for returning the application was that it was "dated wrong." The letter noted certain other deficiencies, all of which were minor in nature, as will be demonstrated later.

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<sup>1/</sup>See Exhibit A for a chronological listing of events.

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3. Although the letter returning the application was dated May 7, 1959, it was not mailed until May 11, 1959, and the usual procedure is to send such letters by regular mail. According to the Post Office, it would take at least four to five days for such mail to reach an addressee at Santa Maria, California, i.e., May 15 or 16.

4. Upon receipt of the Commission's letter of May 7, 1959, Radio Cabrillo immediately corrected its application as instructed in the Commission's letter and returned it to the Commission, where it arrived on May 22, 1959.

5. On May 15, 1959, the new cutoff procedure became effective <sup>2/</sup>(Public Notice of April 9, 1959, FCC 59-316, Mimeo No. 71087). Included in the list of applications made part of that notice were those of Radio

Atascadero (BP-12068) and Cal-Coast Broadcasters (BP-12613). Because the application of Radio Cabrillo was refiled on May 22, 1959, the Commission on December 22, 1959, dismissed it on the basis that it was not timely filed so as to be considered with the applications of Radio Atascadero and Cal-Coast Broadcasters, which were designated for hearing that same day.

A. The Manner In Which the Application Filed On April 20, 1959, Was Processed By The Commission Made It Impossible To Remedy Any Defects Before May 15, 1959.

6. As noted above, the application of Radio Cabrillo was filed with the Commission on April 20, 1959, and was returned primarily because a balance sheet of one of the partners was dated after the verification in Section I. Assuming, arguendo, that the difference in dates rendered the application defective, the Commission's failure to notify the applicant promptly of the defect made it impossible to make any corrections before May 15, 1959.

7. As is obvious from the date on which the application was verified (April 7, 1959) and the date on which it was filed (April 20, 1959), it was not one of those applications that was hastily prepared and filed with the Commission in order to beat the May 15, 1959, deadline.

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<sup>2/</sup> As set forth in the Public Notice, the cutoff procedure was established because of engineering problems. No question as to the technical showing has ever been raised with respect to Radio Cabrillo.

It was the result of planning and efforts over an extended period of time looking toward a new and efficient station at Atascadero to serve the public interest, convenience, and necessity. Indeed, the application of Radio Cabrillo was prepared before the industry was even cognizant of the new cutoff procedure.



8. If Radio Cabrillo had been promptly informed of any deficiencies in its application, it could have easily remedied the matter well before May 15, 1959. However, since the letter returning the application was not even mailed until May 11, 1959, some twenty-one days after the application was filed, Radio Cabrillo had no chance whatsoever to correct the deficiencies and return the application to the Commission before May 15, 1959. The fact that such corrections would have been immediately made and the application returned to the Commission is evidenced by the fact that Radio Cabrillo did just that very thing and refiled the application on May 22, 1959. If the letter had been mailed on May 7, 1959, the date on which it was written, Radio Cabrillo would have had at least some chance to refile its application before May 15.

9. In view of the foregoing, it is submitted that it is inequitable and contrary to the public interest to penalize Radio Cabrillo by dismissing its application on the basis that it was untimely filed. Quite the contrary, it was timely filed on April 20, 1959, and could have easily been corrected had Radio Cabrillo been timely notified of any deficiencies. For this reason, if for no other, the application of Radio Cabrillo should be reinstated, nunc pro tunc, as of April 20, 1959, or May 15, 1959.

B. The Only Defective Part Of The Application Was The Balance Sheet Verified On April 10, 1959, And Not The Entire Application.

10. As set forth in Exhibit B, at the time Section I of the application was verified, the balance sheet of Mr. Sinclair was before the affiant to Section I, Mr. Ranger. However, in order to comply with the instructions contained in item 4 of Section III, the application was not sent in to the Commission until Mr. Sinclair was able to personally verify his balance sheet. Thus, Mr. Ranger's verification of Section I was not rendered invalid by the later affidavit of Mr. Sinclair, but was

in fact reinforced as to the truth of the matters contained in Mr. Sinclair's balance sheet. In an earlier case, the Commission held that where the affiant was familiar with the contents of the application, it should not be dismissed even though part of the application was dated subsequent to Section I [ Granite City Broadcasting Co., 4 R.R. 1322i (1949); Midland Broadcasting Co., 3 R.R. 1961 (1948) ]. That principle should be applied here.

11. If the application had been submitted without the balance sheet being verified or, for that matter, without the balance sheet at all, it would have been accepted for filing in accordance with Commission policy and a letter would have been sent to the applicant requesting a verified balance sheet. The absence of a verification on a balance sheet does not make the application defective but merely makes it incomplete. The same should be true where such a verification is subsequent to one contained in Section I. Only the exhibit containing the later verification should be considered defective. This is particularly so in this case, since the balance sheet of Mr. Sinclair was before Mr. Ranger when Section I of the application was signed and since the conflict in dates was the result of efforts to comply with the requirements of Section III of the application.

12. It should also be noted that, strictly speaking, the balance sheet of Mr. Sinclair was not an essential part of the financial requirements of the applicant. Both Mr. Zuchelli and Mr. Ranger have more than adequate financial resources to finance the partnership and to build and operate the station without any assistance from Mr. Sinclair.

13. In previous cases, the Commission has permitted applications having much less equitable claims and much greater defects than the application of Radio Cabrillo to be accepted for filing, nunc pro tunc, as of May 15, 1959. Thus, in the matter of Muskingum Broadcasting Company (FCC 59-1272, Mimeo 81678), which was decided on December 16,



1959, the Commission permitted an application to be considered filed as of May 15, 1959, even though a bank letter, which was part of the financial showing in the application, was dated subsequent to the affidavit in Section I. There the Commission noted that the absence of such a letter would not

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have made the application substantially incomplete. The same reasoning is applicable here. In the matter of WPFA Radio, Inc., an applicant to increase the power of Station WCVS, Springfield, Illinois (BP-13161), the Commission permitted an application that had been submitted on May 15, 1959, which did not even have Section I verified, to be considered filed, nunc pro tunc, as of May 15, 1959 (see FCC letter to WPFA Radio, Inc., dated July 29, 1959). In both of the above cases, it will be noted that the applications were last-minute filings and, as such, entitled to little sympathy. In the instant case, however, the application was prepared even before the new cutoff procedure was announced and was filed well in advance of the May 15 cutoff date. Radio Cabrillo should, therefore, be entitled to no less consideration than was awarded the above-noted two applications. If anything, the application of Radio Cabrillo is entitled to greater consideration and should, on the basis of the decisions rendered in those cases, have its application accepted, nunc pro tunc, as of April 20 or May 15, 1959.

C. Radio Cabrillo Has Not Been Dilatory In Bringing This Matter To The Attention Of The Commission.

14. As noted above, Radio Cabrillo resubmitted its application on May 22, 1959. The application was announced as accepted for filing on July 6, 1959, and was assigned File No. BP-13205. It was not until December 22, 1959, a full five months later, that Radio Cabrillo knew that anything was wrong with its application. On that date, the Commission designated for hearing the applications with which Radio Cabrillo



was in conflict and dismissed the application of Radio Cabrillo (see Broadcast Actions of December 22, 1959, Report No. 3461).

15. At the time the application of Radio Cabrillo was prepared, filed, and refiled, it did not have advice of counsel. The acceptance of the application and its assignment of a file number indicated to the applicant that there were no problems. Upon learning of the Commission's action of December 22, 1959, Radio Cabrillo immediately took steps to retain counsel to determine what the problem was and to do something about it. If Radio Cabrillo had known that its application was considered to be untimely filed, it would have taken immediate steps to bring the matter to the attention of the Commission.

16. At no time before December 22, 1959, did the Commission notify Radio Cabrillo that its application was considered defective. The Commission had such an opportunity when it sent out 309(b) letters to the other two conflicting applicants on July 7, 1959. However, not only was Radio Cabrillo not mentioned, but it was not even sent copies of the letters. If Radio Cabrillo had at least received copies of those letters, it would have known something was wrong. In the absence of any notice whatsoever, Radio Cabrillo had no opportunity until now to bring its case before the Commission.

D. An Applicant Is Entitled To A Section 309(b) Letter Before Its Application Can Be Dismissed.

17. Section 309(b) of the Communications Act of 1934 (as amended) provides that if the Commission finds, upon examination of an application provided for in Section 308, that it is unable to determine whether a grant of the application will serve the public interest, convenience, and necessity, it will forthwith notify the applicant of the grounds and reasons for its inability to make such a finding. Section 308 merely provides that the applications will contain such information as is required by the

Commission and that "Such application and/or such statement of fact shall be signed by the applicant . . . under oath or affirmation."

18. It will be noted that Section 308 does not require that the statement of fact must be made at the same time or before the application is verified by the applicant in order to have the application considered by the Commission. This concept has been made clear by the courts and accepted by the Commission in a long line of decisions. In Johnston Broadcasting Co. v. FCC (85 U.S. App. D.C. 40, 175 F.2d 351, 4 R.R. 2138 (1949)), the Court of Appeals recognized that a verification of the engineering portion of an application could be made nunc pro tunc even though the verification of Section I had been made some time before. This view was followed by the Commission, and it held that the application must be considered to have been pending, though in a defective state, since its original filing [ Johnston Broadcasting Co., 5 R.R. 1320 (1950)]. See also Teleservice Co., 17 R.R. 981 (1958), where an unverified Section II was supplied after the filing of the rest of the application; Hamtramck Radio Corp., 6 R.R. 43 (1950), where the engineering report was dated subsequent

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to Section I; Granite City Broadcasting Co., supra, where the same was true; and Independent Television, Inc., 10 R.R. 1193 (1954), where an affidavit was challenged as improper.

19. It is clear, therefore, that if an applicant supplies the essential information called for in the application form, it is entitled to a letter pursuant to Section 309(b) if the Commission, for any reason, cannot grant the application in the form in which it was filed. There is no basis for distinguishing between previously accepted applications alleged to be defective and requested to be dismissed, and tendered applications alleged to be defective and not acceptable for filing. Such defects should be made the subject of Section 309(b) letters [ Lou Poller, 9 R.R. 531 (1953)]. Thus, where an application has no major defects,



the Commission has followed the policy of accepting the application. Since a tendered application is considered on the same basis as one already accepted, conflicts in verification dates should not be the basis for considering the application to be so defective that its tender cannot be accepted. This being the case, Radio Cabrillo was entitled to receive a Section 309(b) letter and to remedy any defects before the application was returned.

E. The Application Of Radio Cabrillo Was Not Defective In Any Major Respects.

20. The question of a defect with respect to the balance sheet of Mr. Sinclair has already been treated in the foregoing paragraphs. As has been demonstrated, such a defect should only be considered with respect to the balance sheet. The absence of a verification on a balance sheet has never been considered to be of major importance. Rather, it has merely been considered to be a subject to be handled in a Section 309(b) letter (Southern Television, Inc., 8 R.R. 872 (1953); WSTV, Inc., 9 R.R. 624 (1953); M & M Broadcasting Co., 9 R.R. 905 (1953); and Lou Poller, supra).

21. The other defects noted in the Commission's letter of May 7, 1959, returning the application, were likewise minor in nature. As shown below, none of them, individually or collectively, are grounds for returning the application.

22. It was stated that Section I had not been executed in accordance with the instructions contained in paragraph (d) of the application form, in that the names of the partners must appear as shown in the

partnership agreement. The application was signed by Mr. Ranger as a partner in Radio Cabrillo. As was made clear from page 1 of the application, Radio Cabrillo was a partnership consisting of Mr. Ranger, Mr. Zuchelli, and Mr. Sinclair. Thus, although instruction (d) may not have been complied with to the letter, it was nevertheless clear that Mr.



Ranger's position as a partner entitled him to sign the application on behalf of the applicant. As is obvious, such a defect is extremely minor in nature.

23. It was also noted in the letter that the partnership agreement was not dated. This likewise is extremely minor in nature. The Commission has previously accepted an application in which the articles of incorporation were not properly certified [ Middlesboro Broadcasting Co., Inc., 3 R.R. 273 (1946)]. Thus, this defect is of no significance.

24. It was stated that Table I of Section II failed to give the home and street addresses for all partners and that the applicant had failed to answer certain questions. However, it was made clear in the application that Mr. Ranger and Mr. Zuchelli were existing operators of Station KCOY, Santa Maria, California, and that Mr. Sinclair was an employee of that station. Thus, the absence of a street address is of no significance. Likewise, the failure to answer paragraphs 20 and 21 is of no significance since the previous applications and ownership reports of Station KCOY, which is owned by two of the three partners, are on file with the Commission.

25. The absence of a personal balance sheet for Mr. Zuchelli and the net income for the past two years of Mr. Sinclair is, as noted above, ordinarily the subject of Section 309(b) letters. Therefore, these too are of no significance. In addition, Mr. Zuchelli's financial condition was partially demonstrated by the submission of the balance sheet for Arenze Broadcasters, the licensee of Station KCOY, of which Mr. Zuchelli owns 50%.

26. Section IV of the application contained analyses but did not contain the specific program schedule. As is shown by Exhibit C attached hereto, Mr. Ranger, in preparing the application, used the specific program schedule of Station KCOY and submitted an analysis based on that schedule. Since the Commission has in the past refused to consider program schedules

where it appeared that the proposed programming would be of a balanced nature, the absence of a specific program schedule is of no significance [ Hearst Radio, Inc., 3 R.R. 731 (1946); and The Four States Broadcasting Co., 18 R.R. 616 (1959)]. Moreover, since the application is for a day-time-only operation, it is obvious that the program schedule would be concentrated within the daytime hours and would, therefore, be available to all listeners. Such a schedule, particularly with regard to public service programs, could not be presented during late hours when few listeners would be expected to be available. The mere presentation of a schedule as required by the application, without specific descriptions of the particular programs involved, would be of little assistance to the Commission (The Four States Broadcasting Co., *supra*). In addition, it has been the Commission's policy that where a schedule was not included in the application, the applicant would be requested to furnish one.

27. The absence of Exhibit No. 2, identified as an option on land, is likewise of no significance. The Commission has not required applicants to present for its perusal such exhibits.

28. As can be seen from the foregoing, it is abundantly clear that the deficiencies noted in the application of Radio Cabrillo were minor at best. The Commission has on other occasions accepted applications equally deficient, if not more so (Middlesboro Broadcasting Co., Inc., *supra*; Lawrence A. Harvey, 9 R.R. 636 (1953); and Muskingum Broadcasting Company, *supra*). As the Commission has said in the past, while it is evident that an application might leave much to be desired by way of compliance with the instructions in the application, the Commission's policy, which it has consistently followed in such matters in the past, is that an application is sufficiently complete to warrant further consideration on the merits if it has no major defects (Lawrence A. Harvey, *supra*). Only where the application is lacking in major respects will it be returned. In fact, corrections are usually made concurrently, and an application is acceptable where a determination of the major considerations may be made



(Middlesboro Broadcasting Co., Inc., supra). In view of the foregoing, it is clear that the alleged defects in the application of Radio Cabrillo were not of major importance. The defects as noted should have been the

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subject of a Section 309(b) letter, and had there been no affidavit on Mr. Sinclair's balance sheet, there can be little doubt that such would have been the case.

#### Other Matters

29. It should be noted in passing that the Federal Communications Bar Association has raised the question of the legality of the manner in which the new cutoff procedure was established by the Commission. With this petitioner agrees. However, in order not to burden the Commission with further arguments on this matter, those made by the Federal Communications Bar Association in its pleading of May 8, 1959, are adopted herein. It is further noted that Part O of the Rules, which contains the delegation of authority from the Commission to the License Division, provides only that the Division exercise responsibility for the receipt, initial examination, filing, indexing, recording, and routing of all applications. Nowhere is the Division given the authority to return applications or to make a decision as to whether or not such applications comply with Commission requirements on legal, technical, and financial matters.

30. Another matter which is of prime importance in considering whether or not the application of Radio Cabrillo should be reinstated, nunc pro tunc, as of April 20, 1959, or May 15, 1959, is the fact that the public has a very definite and important stake in the matter. As noted in the beginning of this petition, two other applications are in conflict with that of Radio Cabrillo. They are Radio Atascadero (BP-12068, Docket No. 13330) and Cal-Coast Broadcasters (BP-12613, Docket No. 13331). The application of Radio Atascadero requests operation on 1490 kc, with a power of only 100 watts, unlimited hours of operation. As is obvious from the Commission's files, the proposal for 100 watts is something



very rare indeed, since it has been long recognized that with such low power an extremely poor service will result. Likewise, Santa Maria, California, already has three stations, <sup>3/</sup> and the addition of a fourth station by Cal-Coast Broadcasters has little to merit its grant. Moreover, two other applications are pending for Santa Maria, these being Salinas Valley

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<sup>3/</sup> KSMA, KDAY, and KCOY.

Broadcasting Corp. (560 kc, 1 kw, DA-1, BP-12661) and Pacific Radio Company (1150 kc, 5 kw, DA-2, BP-13348). On the other hand, Radio Cabrillo is requesting authority to operate on 1480 kc, with a power of 500 watts, daytime. Its application has been thoroughly prepared by a competent consulting engineer, and the efficiency of such an operation, as well as the fact that it will provide a fair, efficient, and equitable distribution of radio services to the area, is obvious. If the Commission refuses to consider the application of Radio Cabrillo, such refusal will amount to a denial of the Commission's statutory obligation to determine what would best serve the public interest, convenience, and necessity. It is submitted that this is a step that the Commission should not be willing to take.

31. The Examiner in the proceeding on the applications of Cal-Coast and Radio Atascadero has ordered that a prehearing conference be held at 2:00 p.m. on January 22, 1960. The Chief Hearing Examiner has ordered that the hearing on these applications is scheduled to commence on March 17, 1960.

32. In order that the Commission's processes may not be unnecessarily complicated, it is submitted that the better method of procedure would be to set aside the Commission's order of designation of December 22, 1959, until such time as the Commission has resolved the matters

raised in this petition. To proceed now might not only unnecessarily complicate the matter should the application of Radio Cabrillo be reinstated, but it would also unfairly prejudice the Ashbacker rights of Radio Cabrillo to a fair hearing.

WHEREFORE, THE PREMISES CONSIDERED, It is respectfully requested that the Commission reinstate the application of James H. Ranger, William R. Sinclair, and Ed J. Zuchelli, d/b as Radio Cabrillo (BP-13205), as of April 20, 1959, or May 15, 1959. It is further requested that the Commission set aside the order of designation in Dockets Nos. 13330 and

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13331 until such time as the Commission has made a determination with regard to the instant petition.

Respectfully submitted,

James H. Ranger, William R. Sinclair,  
and Ed J. Zuchelli, d/b as  
RADIO CABRILLO

Of Counsel:

Spearman and Roberson  
1023 Munsey Building  
Washington 4, D. C.

By /s/ Richard Hildreth  
Its Attorney

Dated: January 18, 1960

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Radio Cabrillo  
Exhibit A

RADIO CABRILLO

|                                    |                |
|------------------------------------|----------------|
| Application notarized              | April 7, 1959  |
| Sinclair's balance sheet notarized | April 10, 1959 |
| Application filed                  | April 20, 1959 |
| Announced as tendered              | April 22, 1959 |
| Return letter dated                | May 7, 1959    |
| Application returned               | May 11, 1959   |

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|                                                                                                            |                   |
|------------------------------------------------------------------------------------------------------------|-------------------|
| Announced as returned                                                                                      | May 14, 1959      |
| Application refiled                                                                                        | May 22, 1959      |
| Announced as refiled                                                                                       | May 26, 1959      |
| Accepted for filing                                                                                        | July 6, 1959      |
| 309(b) letters to others                                                                                   | July 7, 1959      |
| Action dismissing application                                                                              | December 22, 1959 |
| Letter dismissing application                                                                              | December 22, 1959 |
| Letter mailed                                                                                              | December 24, 1959 |
| Order released designating Dockets<br>Nos. 13330 and 13331 for hearing                                     | December 28, 1959 |
| Order released scheduling hearing<br>on March 17, 1960, in Dockets<br>Nos. 13330 and 13331                 | January 6, 1960   |
| Order released scheduling prehearing<br>conference on January 22, 1960, in<br>Dockets Nos. 13330 and 13331 | January 12, 1960  |

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WAlnut 5-2644

SANTA MARIA, CALIFORNIA

January 11, 1960

Mr. Richard Hildreth  
Spearman & Roberson  
Attorneys At Law  
Munsey Building  
Washington 4, D. C.

[ Received Jan 13 1960  
Spearman & Roberson ]

Dear Dick:

This letter concerns the application of Radio Cabrillo for a construction permit for Atascadero California and the discrepancy on the dates of the financial statements of the principals involved.

The date on the financial statement of William Sinclair was different than that of James H. Ranger and Ed John Zuchelli because at the time of notarization, Mr. Sinclair was out of town on a business



trip. However, on the date the application was filed, I had Mr. Sinclair's financial statement before me, and merely waited until he returned to Santa Maria to verify the statement and have him notarize it.

/s/ James H. Ranger

JHR:ls

/s/ William R. Sinclair

[ Jurat dated January 12, 1960 ]

\* \* \* \* \*

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Walnut 5-2644

SANTA MARIA, CALIFORNIA

January 11, 1960

Mr. Richard Hildreth  
Spearman & Roberson  
Attorneys At Law  
Munsey Building  
Washington 4, D. C.

Dear Dick:

This letter concerns the application of Radio Cabrillo for a standard AM broadcast station in Atascadero California, and the method used to obtain the per centages listed in the application.

I took a sampling of the logs for Radio Station KCOY in Santa Maria, and applied those per centages to the proposed operation in Atascadero. I did this because we felt that we had a successful operation here, and that logically we could follow basically the same programming for Atascadero. We felt that both from a community service angle and an economic angle, similar programming to that on Station KCOY here in Santa Maria would best serve Atascadero.

/s/ James H. Ranger

JHR:ls

[ Jurat dated January 12, 1960 ]

\* \* \* \* \*

[ Received Jan 21, 1960, FCC ]

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington 25, D. C.

In re Application of )

James H. Ranger, William R. Sinclair, )  
and Ed J. Zuchelli, d/b as )  
RADIO CABRILLO )  
Santa Maria, California )

For Construction Permit )

Docket No. \_\_\_\_\_  
File No. BP-13205

SUPPLEMENT TO PETITION FOR RECONSIDERATION  
AND REINSTATEMENT OF APPLICATION, NUNC PRO  
TUNC, AS OF APRIL 20, 1959, OR MAY 15, 1959, AND  
FOR OTHER RELIEF

James H. Ranger, William R. Sinclair, and Ed J. Zuchelli, d/b as Radio Cabrillo, by its attorneys, hereby supplements the above-noted petition filed with the Commission on January 18, 1960, pursuant to Section 405 of the Act and Section 1.191 of the Commission's Rules and Regulations.

1. In paragraphs 10, 11, and 20 of the said petition, the impression that the balance sheet of Mr. Sinclair was required by Section III of the form to be verified may have been inadvertently advanced. The instructions to item 4 of Section III do not contain any requirement that a balance sheet in an application such as that of Radio Cabrillo be verified. The same is true of the Commission's regulations. All that is required is that a balance sheet be supplied.

2. Thus, the verification by Mr. Sinclair of his balance sheet was an additional step not required by the application or the Rules and Regulations of the Commission. It neither added to nor detracted from the balance sheet. The presence or absence of such a verification is absolutely immaterial insofar as the Commission's consideration of the

application is concerned. It therefore follows that whether or not such a verification is dated subsequent to the verification of Section I has no bearing on the ability of the Commission to consider the application.

3. In this particular case, one further facet must be considered. While the verification on Mr. Sinclair's balance sheet was dated April 10, 1959, the balance sheet itself, which was before the affiant to Section I, reported the financial condition of Mr. Sinclair as of April 7, 1959, the date on which Section I was verified. In other words, the application of Radio Cabrillo had no conflicting dates as of the date Section I was verified.

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Such conflict arose three days later by reason of Mr. Sinclair's verification of his balance sheet. The question, therefore, is whether a valid application can be rendered invalid by a later, unnecessary verification. The answer is clearly in the negative. The verification in this case was simply an attempt to comply with what was erroneously thought to be required by the instructions contained in item 4 of Section III of the application form. It might also be noted in passing that nowhere in the application form are there any instructions that caution an applicant not to have any exhibits dated after the verification to Section I.

4. Technically speaking, the instant application could be considered as having been amended by the subsequent affidavit. Since Mr. Sinclair is a partner, he had the legal power to amend the application at any time after Section I had been verified. Although such amendments usually come after an application is filed, the mere act of filing would not appear to be controlling. Thus, if the application was filed without Mr. Sinclair's balance sheet, he could have submitted it, under oath, as an amendment to the application. The fact that it was submitted with the application should not change this. Therefore, rather



than being considered defective because of conflicting dates, the application, at worst, could be considered as merely having been amended by one of the partners to the applicant before the application was filed.

Respectfully submitted,

James H. Ranger, William R.  
Sinclair, and Ed J. Zuchelli, d/b as  
RADIO CABRILLO

By) /s/ Richard Hildreth  
Richard Hildreth  
Its Attorney

Of Counsel:

Spearman and Roberson  
1023 Munsey Building  
Washington 4, D. C.

Dated: January 21, 1960

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[Received February 1, 1960, FCC]

OPPOSITION TO PETITION FOR RECONSIDERATION  
OF APPLICATION, NUNC PRO TUNC, AS OF  
APRIL 20, 1959 OR MAY 15, 1959 OF RADIO CABRILLO

Come now Edward E. Urner and Bryan J. Coleman, d/b as Cal-Coast Broadcasters, by their attorneys, in opposition to the Petition for Reconsideration of James H. Ranger, William R. Sinclair and Ed J. Zuchelli, d/b as Radio Cabrillo. The Petition for Reconsideration requests the Commission to reinstate Radio Cabrillo's application as of April 20, 1959, or May 15, 1959, nunc pro tunc, and to set aside its order of designation in Docket Nos. 13330 and 13331, the latter Docket containing the application of Cal-Coast Broadcasters. In support of its opposition, Cal-Coast Broadcasters respectfully states as follows:

1. An application was filed by Radio Cabrillo on April 20, 1959, for a new standard broadcast station at Atascadero, California. By letter dated May 7, the Commission, by its Secretary, returned this

application upon a finding that "... it is not acceptable for Commission consideration in its present form." The covering letter listed the several serious defects in

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the application, which included:

- a. Verification of financial data subsequent to the signing and verification of Section I of the application.
- b. Improper execution of Section I.
- c. The partnership agreement was not dated.
- d. The home street addresses of the partners were not listed.
- e. The application failed to answer important questions relating to control of the applicant (Questions 20 and 21, Part II).
- f. No balance sheet was submitted for Mr. Zuchelli, one of the partners of Radio Cabrillo.
- g. The application failed to disclose the schedule of programs for the typical week of proposed operation, as required by Section IV, Paragraph 2(b).
- h. The application failed to disclose the option on land purportedly available.
- i. Additional copies of Section V-G and exhibits were required.

2. The Commission's return of this defective application was appropriate under Section 1.306 of the Rules which provides in part that: "Applications which are not substantially complete will be returned to the applicant."

3. The Commission's Public Notice of April 8, 1959, which was published in the Federal Register, established a cut-off date of May 15, 1959 for the consideration of certain applications, which list included those of Cal-Coast Broadcasters (BP-12613) and Radio Atascadero

(BP-12068). The Radio Cabrillo application was not properly filed until May 22, 1959. Thus, under Section 1.106(b)(4) of the Rules,<sup>1/</sup> the Commission properly

<sup>1/</sup> Any mutually exclusive application filed after the date prescribed in sub-paragraphs (1), (2), or (3) of this paragraph will be dismissed without prejudice and will be eligible for refiling only after a final decision is rendered by the Commission with respect to the prior application or applications or after such application or applications are dismissed or removed from the hearing docket.

dismissed this late-filed application of Radio Cabrillo, and designated for hearing the applications of Cal-Coast Broadcasters, Docket 13331 and Radio Atascadero, Docket 13330.

4. The purpose of establishing cut-off dates, such as that indicated in paragraph 3, supra, is to effect a more orderly and equitable processing of the tremendous volume of applications submitted to the Commission. Without such dates, applications could be, and indeed have been, held up for years while initial consideration is given to newly filed and conflicting applications. Certainly, the cut-off procedure has produced an order which should not be ignored except for most serious reasons. If exceptions are made to these cut-off procedures for trivial reasons, the whole problem of processing applications will become even more complicated and uncertain than that prevalent prior to the establishment of cut-off dates. In this case, for example, allowance of the relief requested by Radio Cabrillo would necessitate an entirely new line of McFarland letters.

5. Radio Cabrillo has failed to establish any basis warranting a departure from the Commission's policy or from its Rules. Incidentally, Radio Cabrillo blames the Commission for its predicament, alleging that the manner in which the original application was processed made it impossible to remedy any defects. However, Radio Cabrillo's carelessness in preparing the faulty application is certainly not the



fault of the Commission. Cabrillo's second contention to the effect that the balance sheet was the only defective part of the application is incorrect. As shown in paragraph 1, supra, its original application was defective and incomplete in several respects.

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6. On page 6 of the Petition, it is alleged that Radio Cabrillo was entitled to a Section 309(b) letter before its application can be dismissed. The allegation is incorrect because an applicant's right to a Section 309(b) letter is limited to applications provided for in Section 308 of the Act. Section 308(b) of the Act provides that applications must contain certain specific information, including such other information as the Commission may require. As the "application" of Radio Cabrillo as initially submitted was not an application as specified in Section 308, no Section 309(b) letter was required.

7. Radio Cabrillo further alleges that the application was not defective in any major respect. It asserts that the application was not one filed in haste at the last minute. This contention is squarely opposed by the Commission finding, in its letter of May 7, 1959, that the application was not acceptable for filing, and its reaffirmation of this finding by its dismissal of the application. Under no circumstances could the several deficiencies in the original application be considered trivial or minor. When the cumulative effect of these items is considered, it is clear that the Commission acted in a proper manner in returning the application.

8. On pages 10-11 of the Petition, Radio Cabrillo advances certain arguments as to the purported merits of its application. The question of the merits of its application is not now before the Commission, and Cal-Coast Broadcasters will not presume upon the Commission's time by responding to such arguments.

9. Radio Cabrillo's Petition relies principally upon the Commission's opinion and order in re Muskingum Broadcasting Co., FCC 59-1272, adopted December 16, 1959, and cases therein cited. In that case an application was accepted for filing as of May 15, 1959, the date it was first tendered for filing. However, that case is clearly distinguishable on the facts. In the Muskingum case, the only discrepancies in the application were:

- "a) The applicant had failed to answer the question whether all parties to the application were citizens of the United States. However, the applicant indicated that all parties to the application were born in the United States. Obviously, the failure to answer the question was inadvertent.
- "b) There was a discrepancy in the engineering exhibits as to the size of the wire to be used in the ground system.
- "c) The street address of the proposed studio location was not given.
- "d) Only three copies of two exhibits to Section V-G of the application were submitted.
- "e) Bank letter dated subsequent to application."

In contrast, as indicated in paragraph 1, supra, the application of Radio Cabrillo omitted necessary data on financial qualifications, proposed program services, information relating to control issues, availability of realty to applicant, and appropriate identification of the applicant. Even the application itself was incorrectly executed. Certainly, the major defects in the original application of Radio Cabrillo cannot be equated with the trivial deficiencies in the Muskingum application.

10. In the Muskingum case, the Commission stated:

"... the basic question is whether the application, without regard to the 'bank letter' was substantially



complete within the meaning of Section 1.306 of the Rules."

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If the same ruling is applied in this case it is evident that Radio Cabrillo's application was not substantially complete. For as noted above, the application did not even contain a program schedule, one of the most significant portions of any application. [Radio Cabrillo makes an obscure argument that a program schedule is unimportant (pp. 8-9 of Petition). Surely the Commission does not agree with so cavalier an attitude and we will not reply further to this point.]

11. It is manifest that reinstatement of Radio Cabrillo's defective application would constitute a tremendous encouragement to the filing of hastily prepared, incomplete, and otherwise defective applications. If for no other reason than the avoidance of such encouragement, the Commission should deny the instant Petition for Reconsideration.

WHEREFORE, Cal-Coast Broadcasters respectfully requests denial of the relief requested in the Petition for Reconsideration of Radio Cabrillo, and that the Commission affirm its dismissal of the Radio Cabrillo application, and for such other and further relief as the Commission considers just and proper.

Respectfully submitted,

Edward E. Urner and Bryan J. Coleman,  
d/b as Cal-Coast Broadcasters

By Haley, Wollenberg & Bader

/s/ Andrew G. Haley

Andrew G. Haley

/s/ Michael H. Bader

Michael H. Bader

1735 DeSales Street, N.W.  
Washington 6, D. C.

/s/ Donald L. Rushford

Donald L. Rushford

February 1, 1960

Their Attorneys



[Received February 11, 1960, FCC]

### REPLY TO OPPOSITION

Comes now James H. Ranger, William R. Sinclair, and Ed J. Zuchelli, d/b as Radio Cabrillo, by its attorneys, and respectfully replies to the opposition filed on behalf of Edward E. Urner and Bryan J. Coleman, d/b as Cal-Coast Broadcasters, on February 1, 1960, In support thereof, the following is presented.

1. For the most part, the matters discussed by Cal-Coast in its opposition have already been covered by Radio Cabrillo in its original petition. However, in order to clarify some of the questions raised by Cal-Coast, they will be gone into below.

2. Cal-Coast claims that the reinstatement of Radio Cabrillo's application would "constitute a tremendous encouragement to the filing of hastily prepared, incomplete, and otherwise defective applications." No supporting argument is presented in support of this sweeping argument, and it is clear that the statement is ridiculous on its face. The further argument that the acceptance will make the processing procedure more complicated and uncertain is likewise ridiculous. The Commission's consideration of this case can affect only the processing of the application of Radio Cabrillo and can in no way result in the conditions which Cal-Coast has attempted to conjure up. Indeed, the only support that Cal-Coast presented for its statement of complicated and uncertain processing conditions was that the application of Radio Cabrillo would require a new McFarland letter if accepted. If this is any problem, or if it would help to expedite matters, Radio Cabrillo is agreeable to waiving its rights to a McFarland letter.

3. Although Cal-Coast states that the defects in the Radio Cabrillo application were major in nature, it fails to overcome the arguments presented by Radio Cabrillo and the cases in support of the arguments as set forth in

the original petition. Instead, Cal-Coast is simply content to rely on its characterization of the alleged defects as "major."

4. In paragraph 9, Cal-Coast attempts to distinguish the Muskingum Broadcasting Co. case (FCC 59-1272). Needless to say, its efforts here fall far short of its announced intention. The principles of the Muskingum case are clearly applicable to the instant situation. Moreover, it is important to note that the Muskingum case was not decided until December 16, 1959, some six months after the application was resubmitted. There, the Commission did not raise any questions concerning possible complications resulting to its processing procedure by the reinstatement of the application or any problems that might arise as a result of sending a McFarland letter to the applicant. This being the case, no valid question can exist as to the ramifications resulting from the reinstatement of the application of Radio Cabrillo.

5. It is important to note that, in addition to the Muskingum case, Radio Cabrillo has cited many other Commission decisions in support of its position. Cal-Coast made no effort to reply to those matters. Instead, as noted above, Cal-Coast simply relied on vague generalizations and unsupported arguments. Needless to say, such an approach completely fails to provide a basis for the denial of the petition for reconsideration filed by Radio Cabrillo.

WHEREFORE, THE PREMISES CONSIDERED, it is respectfully requested that the Commission deny the "Opposition to Petition for Reconsideration of Application, Nunc Pro Tunc, as of April 20, 1959 or May 15, 1959 of Radio Cabrillo" which was filed by Cal-Coast Broadcasters on February 1, 1960.

Respectfully submitted,

James H. Ranger, William R.  
Sinclair, and Ed J. Zuchelli, d/b as  
RADIO CABRILLO

\* \* \*

By /s/ Richard Hildreth  
Its Attorney

Dated: February 11, 1960

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[Certificate of Service]

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[Received February 18, 1960, FCC]

SUPPLEMENT TO OPPOSITION TO PETITION FOR  
RECONSIDERATION AND REINSTATEMENT OF  
APPLICATION, NUNC PRO TUNC, AS OF APRIL 20,  
1959, OR MAY 15, 1959 OF RADIO CABRILLO

On February 1, 1960, Cal Coast Broadcasters submitted its opposition to the Petition of Radio Cabrillo for reconsideration and reinstatement of its application, Nunc Pro Tunc, as of April 20, 1959, or May 15, 1959, and to set aside the Commission's order of designation in Docket Nos. 13330 and 13331. On February 12, 1960, the Commission released a memorandum opinion and order (FCC 60-121) which is particularly pertinent to the proper disposition and denial of the instant petition. This supplement deals solely with the significance of that Commission order and does not repeat any arguments previously submitted.

In support of its Supplement, it is respectfully stated as follows:

1. On September 10, 1959, Community Broadcasting Company filed with the Commission a petition to accept its application Nunc Pro Tunc and

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for consolidation, of its application in a pending proceeding. In this connection, petitioner also requested a waiver of certain Commission Rules, including the cut-off rules. Previously, the Commission had returned the petitioner's application because the engineering affidavit was dated 2 days after the verification of the application. No other defects in the application were noted.

2. It is thus apparent that the basic situation with respect to the Petition of Community Broadcasting Company is virtually identical



to the situation of Radio Cabrillo herein. However, whereas the only defect of the Community Broadcasting Company application was the unacceptable date of the engineering affidavit, the application of Radio Cabrillo was saturated with important defects and omissions as indicated in Paragraph 1 of our Opposition.

3. Nevertheless, the Commission denied the petition of Community Broadcasting Company finding that even if the allegations set forth by petitioner were substantiated, they do not constitute a valid basis for waiver of the Rules. The Commission stated:

"These rules were adopted because of the urgent need for a more expeditious procedure for the processing of standard broadcast applications. We believe that only for the most compelling reasons should a request as made herein be granted." (FCC 60-121, pp. 3, emphasis added)

The Commission added:

"We believe that the circumstances in the instant case are such that the applicant with reasonable diligence could have filed its instant application before the May 15 cut-off date." (FCC 60-121, pp. 3-4)

4. Furthermore, in Paragraph 7 of the aforementioned opinion and

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order, the Commission recognized that it would be manifestly unfair to other timely filed applicants and would impair the right of these applicants if the Community Broadcasting Company application were to be consolidated in hearing with their applications. It was further noted that the proceeding would be subject to increased complexities by the grant of the Petition.

5. The subject memorandum opinion and order of the Commission effectively refutes the reliance of Radio Cabrillo on the Johnson Broadcasting Company decision, 5 Pike and Fischer RR 1320, 1323.

That case stood for the proposition that a defect in the verification of an application can be cured by a Nunc Pro Tunc amendment where the rules of the agency permit and where such amendment would be consistent with the equities of the particular circumstances involved. Regarding the application of the Community Broadcasting Company, the Commission recognized that no equities had been acquired by that party. Precisely the same is true with respect to Radio Cabrillo herein.

Wherefore, in view of the Commission's opinion and order (FCC 60-121, released February 12, 1960), and for the matters set forth in the Opposition of Cal Coast Broadcasters filed on February 1, 1960, the petition of Radio Cabrillo filed on January 18, 1960 should be denied.

Respectfully submitted,

Edward E. Urner and Bryan J. Coleman,  
d/b/as Cal-Coast Broadcasters

By Haley, Wollenberg & Bader

/s/ Andrew G. Haley

\* \* \*

/s/ Donald L. Rushford

February 18, 1960

Their Attorneys

[113]

[Released April 4, 1960, FCC]

#### MEMORANDUM OPINION AND ORDER

By the Commission: (Commissioners Ford, Chairman; and Lee absent)

1. The Commission has before it (1) a Petition for Reconsideration, filed January 18, 1960 by Radio Cabrillo (hereinafter Cabrillo or petitioner) and a supplement thereto, filed January 21, 1960, requesting the Commission (a) to reconsider its action of December 22, 1959, in which the above-described application of petitioner was dismissed, (b) to reinstate said application, nunc pro tunc, as of April 20, 1959 or May 15, 1959, and (c) to set aside the separate action of December 22, 1959, in Dockets Nos. 13330 and 13331 designating for consolidated hearing two other conflicting applications; (2) an Opposition, filed



February 1, 1960, by Cal-Coast Broadcasters (hereinafter Cal-Coast); and (3) a Reply thereto, filed February 11, 1960 by Cabrillo.

2. Certain background information is helpful to an understanding of the Commission's action which dismissed the Cabrillo application. The above-captioned and described application of Cabrillo was tendered for filing on April 20, 1959. However, the Commission by letter dated May 7, 1959, returned said application since upon examination thereof it was found to be not substantially complete pursuant to the requirements of Section 1.306 of the Commission Rules, and therefore not acceptable for filing.<sup>1/</sup>

1/ The application was returned by the License Division of the Broadcast Bureau, pursuant to the delegation of authority contained in Section 0.241(n) of the Rules. The May 7, 1959 letter listed the following deficiencies:

- a) The partnership agreement was not dated.
- b) Questions 20 and 21 of Part II of the application form, relating to control of the proposed station, were not answered.
- c) Ed J. Zuchelli, one of the partners to the proposal, did not submit a balance sheet as required by the application form.
- d) William R. Sinclair, one of the partners to the proposal, did not submit statements of net income after federal taxes for the past two years.
- e) William R. Sinclair's financial statement was signed and verified on April 10, 1959 whereas the application was dated and verified as of April 7, 1959.
- f) A schedule of programs for the proposed typical broadcast week was not submitted, as required by the application form.
- g) The home street addresses of the partners were not listed as required.
- h) Section I of the application form did not state the exact partnership name, as appearing in the partnership agreement, in accordance with the instructions in Paragraph D of the said form.
- i) It was also noted that, although there was an exhibit "2" listed on page 2 of Section I, regarding option on land, it was not received along with the original application. Instruction C, Section I, requires that all exhibits be properly set out and numbered.

On May 22, 1959, the Cabrillo application was resubmitted with the noted deficiencies corrected. The application was accepted for filing



as of that date. (File No. BP-13205). On December 22, 1959, the Commission designated for consolidated hearing the applications of Radio Atascadero (1490kc, 100w, U), Atascadero, California (File No. BP-12068, Docket No. 13330) and Cal-Coast Broadcasters (1480kc, 1 kw, D), Santa Maria, California (File No. BP-12613, Docket No. 13331). The Radio Atascadero application was included in the list of applications with a May 15, 1959 cut-off date (Public Notice-B, April 9, 1959, FCC 59-316, Mimeo 71087). Accordingly, since the Cabrillo proposal involved mutually destructive interference with the Radio Atascadero proposal and was untimely filed for consideration therewith, it was not consolidated in the hearing and was dismissed in accordance with the provisions of Section 1.106(b)(4) of the Commission Rules. (Atascadero's request for dismissal was granted on March 14, 1960).

3. Cabrillo contends in its instant petition that the Commission returned its application primarily because the balance sheet of one of the partners was dated after the date of verification of the application; that the letter accompanying the returned application, although written on May 7, 1959, was not mailed until May 11, 1959; that it therefore did not have the opportunity to correct and resubmit its application to the Commission before the May 15, 1959 cut-off date; that the later verification by Sinclair, a partner, of his balance sheet, which was submitted with the application, did not render void the prior verification of the application; that only the exhibit containing the balance sheet should have been returned<sup>2/</sup>; that if an application cannot be granted in the form submitted, but contains the essential information as required in the form, the applicant is entitled to notice of the deficiencies under Section 309(b) of the Communications Act; that since the defects in its application were only minor its application should have been the subject of a 309(b) letter; that the Commission's License Division did not have authority to return its application; and that its application would provide a more fair, efficient and equitable distribution of radio service to the area under consideration.

4. Cal-Coast in its opposition asserts that the Cabrillo application was properly returned as incomplete pursuant to Section 1.306 of the Rules; that the resubmitted application was untimely filed under Section 1.106(b)(4) of the Rules to be entitled to consideration with the two applications designated for hearing; that apart from the question pertaining to the verification of the balance sheet, the Cabrillo application was defective and incomplete; that the Cabrillo petition should be denied, since reinstatement of its application would encourage the filing of

2/ In a supplemental petition Cabrillo contends that the verification of Sinclair was not required; that the balance sheet of Sinclair, although dated April 10, 1959, was in existence and physically before the partner who swore to the application on April 7, 1959; and that therefore the application should not be considered as defective because of the conflicting dates, but rather as having been amended by one of the partners to the application before it was filed.

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hastily prepared, incomplete and otherwise defective applications; and that there are no equities in favor of Cabrillo which would warrant the grant of a nunc pro tunc amendment.

5. In its Reply Cabrillo states that the acceptance of its application would not create complicated and uncertain processing conditions merely because it would then be entitled to a 309(b) letter, but that if this is found to be a consideration, it will waive its rights to such letter.

6. We first consider whether Radio Cabrillo has standing to file the instant petition. Since petitioner did not specify any Section of the Communications Act or the Commission Rules pursuant to which the petition was filed, it is presumed to have been filed under the provisions of Section 405 of the Act. Said section provides for the filing of petitions for rehearing "after a decision, order or requirement has been made by the Commission in any proceeding", by any party thereto, or by any other person aggrieved or whose interests are adversely



affected thereby. Because petitioner's application was dismissed, thereby precluding a comparative hearing on said application with those of Cal-Coast and Radio Atascadero, we find petitioner to be a "person aggrieved or whose interests are adversely affected" within the meaning of Section 405 of the Act, to have standing to file this petition to the extent that it requests reconsideration of that particular action. We do not, however, find that petitioner has the requisite standing to petition for reconsideration of our separate action in designating for hearing the applications of Cal-Coast and Radio Atascadero. Accordingly, the instant petition will be considered only as a petition for reconsideration of our action dismissing the petitioner's application.

7. The basic question before us is whether the petitioner's application, tendered for filing on April 20, 1959, and subsequently returned by letter dated May 7, 1959, because it was incomplete, should have been accepted for filing. Section 308(a) of the Communications Act provides that the Commission may grant construction permits "only upon written application therefor", and Sections 308(b) and 319(a) of the Act provide that applications shall set forth such facts as the Commission by regulation may prescribe as to citizenship, character, financial, technical and other qualifications of the applicant to operate the station. Section 1.306(a) of the Commission Rules which concerns the acceptance of applications for filing provides that "applications found to be complete or substantially complete are accepted for filing and are given a file number. In case of minor defects as to completeness, the applicant will be requested to supply the missing information. Applications which are not substantially complete will be returned to the applicant." (Underlining supplied). Thus, the return or acceptance of a defective application is a matter within the discretion of the Commission depending on the completeness of information, or lack thereof, submitted in the application. WSTV, Inc., 9 Pike and Fischer RR 624 (1953); Lawrence A Harvey, 9 Pike and Fischer RR 636. The Cabrillo application, as originally tendered, did not meet the requirements of Section 1.306(a), since it was found to be



deficient in various respects (as enumerated in Footnote 1, supra), and therefore not sufficiently complete to warrant further consideration thereof on the merits. Accordingly, it was returned. Petitioner does not question the practice of the Commission in returning applications which are lacking in major respects, but contends that none of the listed deficiencies, in themselves, made the application defective in any major respect. Even assuming, arguendo, the correctness of this assertion, the various deficiencies, when considered collectively, made the application incomplete, and was the basis for the return of the application as unacceptable for filing. The Commission's consistent practice has been to return such applications. See In re Crown Broadcasting Company, Mead, Washington (January, 1960); In re Big-Horn County Broadcasters, Hardin, Montana (April, 1959); In re Nevada Placer and El Dorado Broadcasters, Placersville, California (December, 1958); In re Independent Broadcasting Company, Inc., Darien, Connecticut (September, 1957). Accordingly, since the application tendered by Cabrillo was not substantially complete, as originally tendered on April 20, 1959, said application was returned as unacceptable for filing pursuant to the provisions of Section 1.306(a) of the Rules and consistent with the usual practice.

8. Petitioner erroneously asserts that its application was returned solely because of the question pertaining to the date of the balance sheet. While the balance sheet as originally tendered could not be accepted, since the date of verification thereof was after the date of verification of the application, we did not find that the inclusion of said balance sheet in the application rendered the verification as to the entire application void or by itself made the application incomplete. Rather, as we have stated, the question pertaining to the balance sheet was only one of numerous defects discovered in the application, which, when considered together, made said application incomplete and unacceptable for filing. Therefore, petitioner's further assertion that the

balance sheet of Sinclair was physically in existence and before the partner who signed and verified the application on April 7, 1959 cannot change our finding herein. Moreover, with respect to this assertion, we note that after an application is tendered for filing, it is examined to determine whether such application is substantially complete and acceptable for filing. Clearly, in making this examination, we must accept the contents of the application at their face value, and we cannot be held to surmise that an apparent defect therein is in actuality or upon subsequent explanation not in fact a defect. Any other procedure would only lead to confusion and would tend to encourage the filing of incomplete and poorly prepared applications. Furthermore, the Commission warned, in announcing the amendment to the rule providing for the new cut-off procedure, that potential applicants would be well advised to make certain that their applications are in good order before filing. Accordingly, we believe that the question pertaining to the date of the balance sheet of William Sinclair was properly considered as one of the numerous defects which made the application incomplete, since, from the face of the application, it appeared that said balance sheet had been inserted in the application after the date of verification thereof.

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9. Petitioner also alleges that the Commission's delay in returning its application and mailing the letter notifying it of the defects therein was unreasonable and made it impossible to resubmit the application in proper form before the May 15, 1959 cut-off date. The letter was written on May 7, 1959 by the License Division of the Broadcast Bureau, and under the ordinary procedure for the processing of such a letter was forwarded to the Office of the Secretary for signature. Thereafter it was sent to the Mail and Files Division for mailing. Since May 7, 1959 was on a Thursday, there remained only one intervening business day before the weekend for the letter to be processed through these necessary channels. Consequently, said letter was not



mailed until May 11, 1959, the following Monday. In view of these facts, we believe that no undue delay occurred in the mailing of the letter. Moreover, the petitioner cannot place the consequences of having submitted a poorly prepared application on the Commission, particularly in view of our prior warning to potential applicants that their applications should be in good order before filing.

10. Nor was Cabrillo entitled to notice pursuant to Section 309(b) of the Communications Act before its application could be returned because of incompleteness. Section 308 of the Act provides, in pertinent part, that "all applications for station licenses, or modification or renewal thereof, shall set forth such facts as the Commission by regulation may prescribe as to citizenship, character, and financial, technical and other qualifications of the applicant to operate the station." Petitioner failed to submit much of this required information. Accordingly, the application was not accepted for filing and, under consistent Commission practice, was returned. Where the basic requirements of an "application" are not submitted, the applicant is not entitled to notice under Section 309(b) before the return of said application.

11. Petitioner also attacks the validity of the new cut-off rule procedure by adopting the arguments in opposition thereto which were made by the Federal Communications Bar Association (FCBA) in a petition filed with the Commission on May 8, 1959. We need not consider such matter further since we denied the FCBA petition, setting forth fully our reasons therefor, in a Memorandum Opinion and Order of May 14, 1959 (18 Pike and Fischer RR 1568i).

12. Cabrillo's assertion that the License Division has no authority to return applications which are incomplete is without merit. Section 0.241(n) of the Commission Rules delegates to the Broadcast Bureau, of which the License Division is a part, the authority "to dismiss or return applications or petitions which are not acceptable under Commission Rules."



13. Under the foregoing circumstances we do not believe that an amendment, nunc pro tunc, to permit acceptance for filing of the petitioner's application by May 15, 1959, would serve the public interest. We have permitted such amendments in the past only where it would be consistent with the equities of the particular factual circumstances involved.

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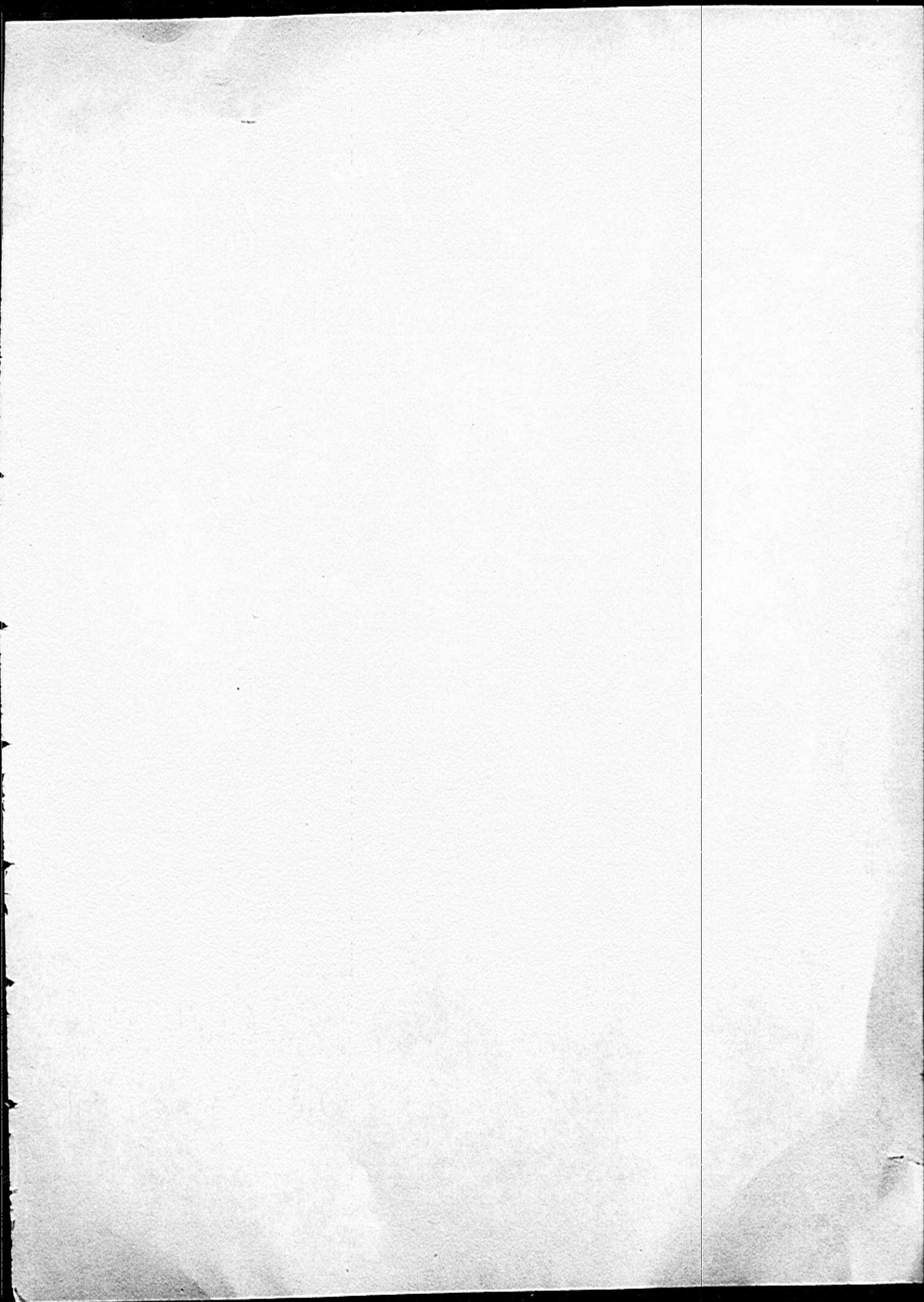
(See Johnston Broadcasting Company v. Federal Communications Commission, 5 Pike and Fischer RR 1320). Since petitioner submitted an incomplete application which was returned in accordance with the usual procedure, we do not believe that petitioner has acquired any equities which would warrant granting this request.

14. In view of the foregoing, IT IS ORDERED, That the above Petition for Reconsideration, filed on January 18, 1960, by Radio Cabrillo IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mary Jane Morris  
Secretary

Adopted: March 30, 1960  
Released: April 4, 1960





BRIEF FOR APPELLANTS

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,714

JAMES H. RANGER,  
WILLIAM R. SINCLAIR,  
and  
ED J. ZUCHELLI,  
d/b/a/ RADIO CABRILLO,

*Appellants,*

v.

FEDERAL COMMUNICATIONS COMMISSION,

*Appellee,*

EDWARD E. URNER  
and  
BRYAN J. COLEMAN,  
d/b/a CAL-COAST BROADCASTERS,

*Intervenors.*

APPEAL FROM THE  
FEDERAL COMMUNICATIONS COMMISSION

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October 1, 1960

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### QUESTIONS PRESENTED

1. Whether the Commission's action of May 7, 1959, returning appellants' application for a new standard broadcast station, its action of December 22, 1959, dismissing appellants' resubmitted application as untimely filed, and its action of April 4, 1960, denying appellants' "Petition for Reconsideration and Reinstatement," were arbitrary, capricious and contrary to the public interest in that:

a. the return of appellants' application as not substantially complete was improper;

b. the delay in returning appellants' application was unreasonable and deprived appellants of an opportunity to refile their application in a timely manner and to obtain a comparative hearing with the application of intervenors;

c. the return of appellants' application was effected without complying with the notice and opportunity to reply provisions of Section 309(b) of the Communications Act of 1934, as amended.

2. Whether Sections 1.106(b)(1) and 1.361(b) of the Commission's Rules, under which appellants' resubmitted application was dismissed, are invalid in that they were adopted in a manner contrary to Sections 4(a) and 4(b) of the Administrative Procedure Act.

Counsel for appellants believes that the following question is also presented:

3. Whether Sections 1.106(b)(4) and 1.361(b) are arbitrary and capricious and contrary to the public interest in that they have no reasonable relationship to the protection of the Commission's orderly administrative process, and deprived appellants of their right to a comparative hearing.

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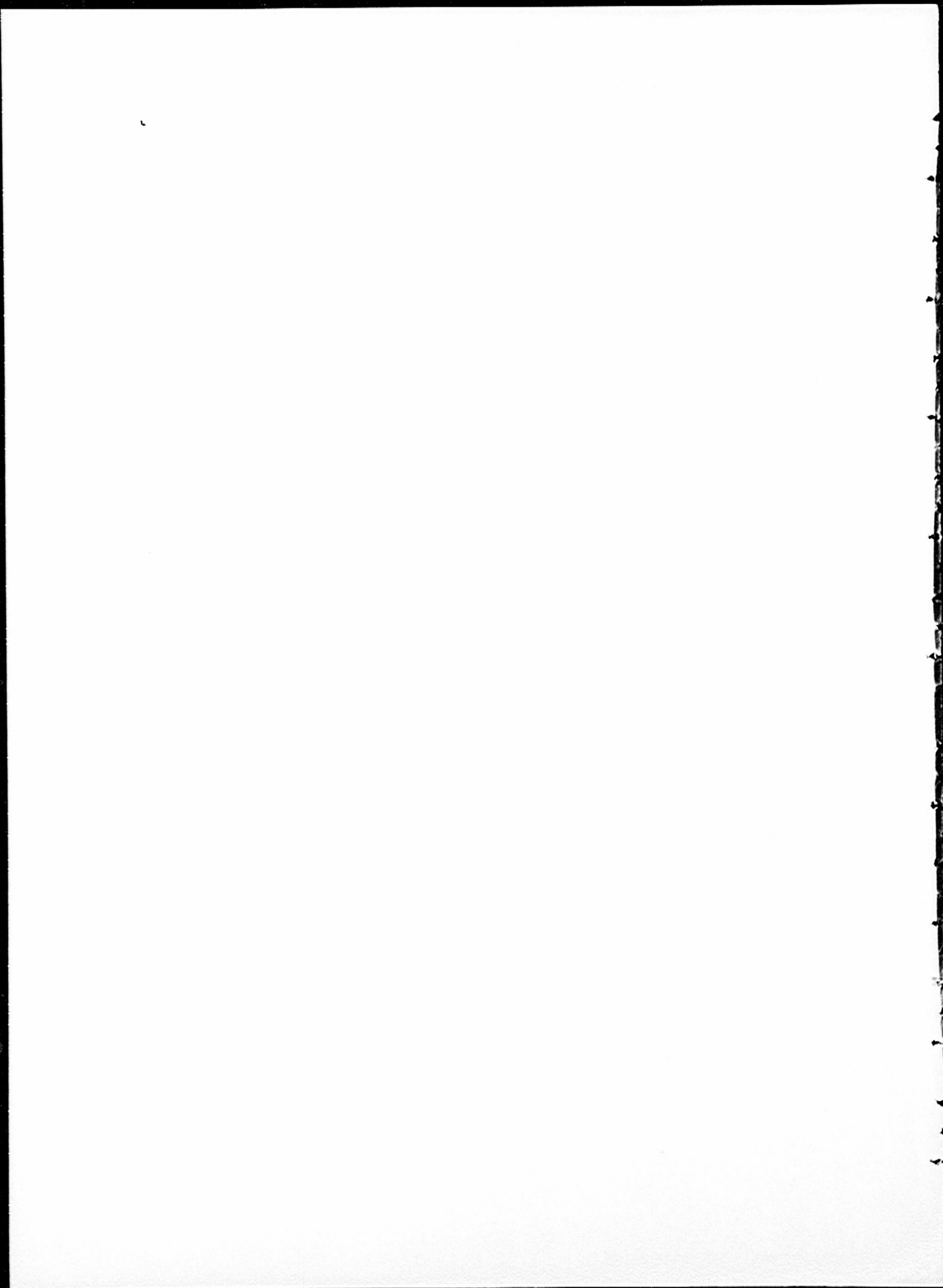
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- A. Statutes, Rules and Regulations.
- B. Miscellaneous letters to applicants in re Applications Being Considered by the Commission.
- C. FCC Form 301 of Radio Cabrillo Tendered for Filing On April 20, 1959 Minus Exhibits and Section V (engineering)
- D. Public Notice of the Federal Communications Commission dated May 14, 1959. - *PAGE 3*



UNITED STATES COURT OF APPEALS  
For The District Of Columbia Circuit

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No. 15,714

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JAMES H. RANGER,  
WILLIAM R. SINCLAIR,  
and  
ED J. ZUCHELLI,  
d/b as RADIO CABRILLO,

Appellants

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee,

EDWARD E. URNER  
and  
BRYAN J. COLEMAN,  
d/b/a CAL-COAST BROADCASTERS,

Intervenors.

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APPEAL FROM THE  
FEDERAL COMMUNICATIONS COMMISSION

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BRIEF FOR APPELLANTS

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### JURISDICTIONAL STATEMENT

This Court's jurisdiction is predicated upon Section 402(b) of the Communications Act of 1934, as amended [48 Stat. 926, as last amended by 66 Stat. 718 (1952), 47 USCA 402(b) (Supp. 1956)] which provides in pertinent part, that "appeals may be taken from decisions and orders of the [Federal Communications] Commission to the United States Court of Appeals for the District of Columbia — (1) By any applicant for a construction permit —, whose application is denied by the Commission," and (b) "By any — person who is aggrieved or whose interests are adversely affected by any order of the Commission — denying any application described in paragraphs (1) — (4) of this subsection."

The appeal was taken from the Memorandum Opinion and Order of the Federal Communications Commission released April 4, 1960, denying Radio Cabrillo's (sometimes referred to as appellant) "Petition for Reconsideration and Reinstatement of Application, Nunc Pro Tunc, as of April 20, 1959, or May 15, 1959, and for Other Relief" and (2) the order of the Federal Communications Commission dated December 22, 1959, dismissing the application of Radio Cabrillo.

### STATEMENT OF THE CASE

James H. Ranger, William R. Sinclair, and Ed J. Zuchelli, d/b as Radio Cabrillo, filed with the Commission on April 20, 1959, an application (pro se) requesting authority to construct a new standard broadcast station at Atascadero, California on 1480 kc, with a power of 500 watts, daytime only hours of operation. This application was announced as tendered for filing by the Commission release dated April 22, 1959. On May 7, 1959, the License Division (over the Secretary's signature) prepared a letter to Radio Cabrillo returning the application principally because the balance sheet of one of the partners was dated subsequent to

the verification of Section I of the application.<sup>1</sup> Section I was sworn and subscribed to under the date of April 7, 1959, and the balance sheet of one of the partners was dated April 10, 1959. This letter noted other deficiencies that appeared on the face of the application.<sup>2</sup>

Although the letter returning the application was dated May 7, 1959, it was not mailed by the Commission until May 11, 1959 by regular mail, to Santa Maria, California.<sup>3</sup> *B-1, 2* (JA)

Radio Cabrillo, upon receipt of the returned application, immediately corrected some of the noted deficiencies and returned the application to the Commission, where it arrived on May 22, 1959. By a Public Notice issued by the Commission on May 26, 1959, the application was announced as tendered for filing. Thereafter, on July 6, 1959, the Commission accepted the application of Radio Cabrillo and assigned to it File No. BP-13205.

On July 7, 1959, the day after the application of Radio Cabrillo was accepted for filing, the Commission issued letters to Radio Atascadero<sup>4</sup> and Cal-Coast Broadcasters in accordance with Section 309(b) of the Communications Act of 1934, as amended, informing each of the reasons why the Commission could not grant their applications and that a hearing might be necessary to resolve the issues. Radio Cabrillo was not issued such a letter, nor was it notified that letters had been sent to these other applicants.

Just before the Radio Cabrillo application was first filed, the Commission, on April 9, 1959, released a Public Notice establishing a

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<sup>1</sup> This fact is substantiated by the Commission's release of May 14, 1959, which stated that the application was being returned because it was "dated wrong." *(JA APPENDIX D)*

<sup>2</sup> *B-1, 2*  
JA

<sup>3</sup> According to the Post Office, a letter mailed in this manner would be in transit at least four or five days to reach an addressee at Santa Maria, California.

<sup>4</sup> See footnote 6, infra.

new "procedure" for processing AM applications which included a new system of "cutoff dates" and restrictions on engineering amendments (FCC 59-315, Mimeo No. 71086, 18RR1565). The establishment of this new "procedure" was achieved without the aid of formal rule making proceedings as required by Sections 4(a) and 4(b) of the Administrative Procedure Act. This was done by the Commission on the theory that the "cutoff" system was procedural in nature, thus avoiding the necessity for defined statutory procedures when the changes involve matters of a substantive nature. The new rules were published in the Federal Register on April 14, 1959, and became effective on May 15, 1959, just thirty days later. Although interested parties filed oppositions attacking the legality of the new procedure, the Commission refused to stay the execution of the rules.<sup>5</sup> (18 RR 1568, 1568d, 1568E, 1568h, 1568m).

On the day the Commission released the Public Notice on the new procedure, another notice was issued (FCC 59-316, Mimeo No. 71087) listing 269 applications that would achieve a protected status on May 15, 1959. The application of Jeannette B. Arment, tr/as Radio Atascadero, applicant for a new station to operate on 1490 kc, with a power of 100 watts, unlimited hours of operation, at Atascadero, California (BP-12068), was No. 237 on that list. As a result of this listing, a "cutoff" date of May 15, 1959, was established for applications which might be in conflict with the application of Radio Atascadero.<sup>6</sup>

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<sup>5</sup> These interested parties were: The Federal Communications Bar Association; the Association of Federal Communications Consulting Engineers; and the Community Broadcasters Association, Inc., an association of Class IV radio station owners whose principal interest is to improve their service by increasing power to 1 kw.

<sup>6</sup> The application of Edward E. Urner and Bryan J. Coleman, d/b as Cal-Coast Broadcasters, which requested authority to construct a new standard broadcast station on 1480 kc, with a power of 1 kw, daytime hours of operation only, at Santa Maria, California, did not appear in this notice. It was involved with the application of Radio Atascadero only by interference with the proposed operation of Radio Atascadero.



On December 22, 1959, the Commission designated for hearing the applications of Radio Atascadero and Cal-Coast Broadcasters in a consolidated proceeding and dismissed the application of Radio Cabrillo.<sup>7</sup> By a letter dated December 22, 1959, the Commission informed Radio Cabrillo that its application was not timely filed for consideration, and dismissed it pursuant to the amended Section 1.106(b)(4) of the Commission's Rules. (JA <sup>R-72</sup> ) The letter, the only notice Radio Cabrillo had received of any problems with its application since the Commission's letter of May 7, 1959, came six months after the Radio Cabrillo application was returned to the Commission and more than four months after it had been accepted for filing and the Section 309(b) letters had been sent to Radio Atascadero and Cal-Coast Broadcasters.

Upon receipt of the Commission's Order, Radio Cabrillo, for the first time, sought legal counsel to determine the nature of the problem involved and what, if anything, could be done to remedy the situation.

Subsequently, a timely petition for reconsideration and reinstatement was filed on January 18, 1960 (JA <sup>R-74</sup> ) raising the questions hereinafter presented, but the Commission, in a Memorandum Opinion and Order released April 4, 1960, denied the relief sought and this appeal followed (JA <sup>R-113</sup> ).

A timely notice of appeal was filed in this Court on May 4, 1960, and thereafter a prehearing conference was held. This Court, by an order dated July 21, 1960, approved the Prehearing Stipulation filed by the parties on July 19, 1960 (JA ).

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<sup>7</sup> The Radio Atascadero application was dismissed without prejudice by Order of the Chief Hearing Examiner on March 14, 1960 (FCC 60M-482). Cal-Coast, as the only applicant in the proceeding, remained in its protected hearing status and received a favorable Initial Decision from the Hearing Examiner on April 25, 1960 (FCC 60D-49). That decision is now pending before the Commission (Docket No. 13331).

## STATUTES, RULES AND REGULATIONS

See Appendix A to this Brief.

### STATEMENT OF POINTS

The Federal Communications Commission erred:

1. In returning the Radio Cabrillo application without first complying with the notice and opportunity to reply provisions of Section 309(b) of the Communications Act of 1934, as amended.
2. By processing the application of Radio Cabrillo in such an unreasonable manner that the appellant was deprived of an opportunity to return its application in a timely manner to obtain comparative considerations with the Intervenor, Cal-Coast Broadcasters.
3. In returning the application of Radio Cabrillo for new broadcast station, filed with the Commission on April 20, 1959, when the application was substantially complete. Therefore the action of the Commission was arbitrary, capricious and contrary to the public interest and precedent of the Commission.
4. In failing to comply with the requirements of Section 4(a) and 4(b) of the Administrative Procedure Act when amending Sections 1.106(b)(1) and 1.361(b) of the Commission's Rules, under which Radio Cabrillo's application was dismissed as not timely filed.
5. In amending Sections 1.106(b)(1) and 1.361(b) of the Commission's Rules, as the rules have no reasonable relationship to the protection of the Commission's orderly administrative process, thus depriving the appellant of its rights to a comparative hearing.

### SUMMARY OF ARGUMENT

Radio Cabrillo submits that the actions taken by the Federal Communications Commission, (a) in returning the appellant's application on April 20, 1959, (b) dismissing the application on December 22, 1959, and (c) denying the "Petition for Reconsideration and Reinstatement of Application, Nunc Pro Tunc, as of April 20, 1959, or May 15, 1959, and For Other Relief," was arbitrary, capricious and contrary not only to the Communications Act of 1934, as amended, the precedents established by the Commission and the Courts, but also to the public interest.

Further, in the absence of rule making proceedings pursuant to the procedure outlined in Sections 4(a) and 4(b) of the Administrative Procedure Act, the amendments to Sections 1.106(b)(1) and 1.361(b) of the Commission's Rules are invalid and thus the new cut-off procedures established in the Commission's notice and the list of the applications bearing the cut-off date of May 15, 1959, are of no effect since the amendments, as adopted, are substantive in nature rather than procedural. In addition, the rules bear no reasonable relationship to the protection of the Commission's orderly administrative process, and thus deprived the appellants of their rights to a comparative hearing.



## ARGUMENT

### I

THE PROVISIONS OF SECTION 309(b) MUST BE COMPLIED WITH WHERE AN APPLICANT HAS MADE A SHOWING PURSUANT TO SECTION 308(b) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED.<sup>8</sup>

Pursuant to Section 1.322(a)(1) of the Commission's Rules, applications for authority to construct new broadcast stations or make changes in existing broadcast facilities are filed with the Federal Communications Commission on FCC Form 301. This form is composed of five sections. Section I requires information as to the name and address of the applicant, a description of the facility requested, and a listing of the exhibits (stating by whom prepared). In addition, this section contains an affidavit which must be sworn and subscribed to by the applicant. The verification covers the complete application and supporting exhibits. Section II provides for the legal qualifications of the applicant. Section III provides for the financial showing of each application, and Section IV calls for an analysis of the program service which will be rendered by the applicant. Section V pertains to the engineering aspects of the proposal.

The Radio Cabrillo application consisted of all five Sections and met all the essential requirements under the Communications Act, as mentioned above.<sup>9</sup> Its application, properly verified, (a) requested authority to construct an AM station; (b) showed the required citizenship; (c) indicated it had the necessary character qualifications; (d) displayed adequate financial information to construct and operate the station; (e) proposed an

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<sup>8</sup> In paragraph 7 of its Memorandum Opinion and Order, (JA <sup>R-115, 116</sup> the Commission erroneously stated that Radio Cabrillo did not question the practice of the Commission in returning applications. This specific question was discussed in paragraphs 17, 18 and 19 of the Petition for Reconsideration (JA

<sup>9</sup> Since the Commission does not have a copy of the application as originally filed, the application, less the exhibits and Section V (engineering) (which were sent back to the Commission when the application was returned on May 22, 1959) is appended hereto as appendix C. <sup>R-79,80</sup>

engineering plan which satisfied the initial inspection of the Commission personnel;<sup>10</sup> and (f) supplied information on staff and programming analyses. The two basic jurisdictional parts of the application are the verification to Section I and the establishment of United States citizenship in Section II (Communications Act of 1934, as amended, Sections 308(b) and 310(a)). These requirements were completely satisfied.

In addition to the basic jurisdictional requirements established by Congress, there is found in Section 308(b) of the Communications Act of 1934, as amended, certain guideposts upon which the Commission is to consider an application. Section 308(b) provides that all applications shall set forth facts "as the Commission by regulation may prescribe as to the (1) citizenship, character, and financial, technical and other qualifications of the applicant to operate the station; (2) the ownership and location of the proposed station; (3) the frequencies and the power desired to be used; (4) the hours of the day or other periods of time during which it is proposed to operate the station; (5) the purposes for which the station is to be used; (6) and such other information as it may require" (underscoring and numbers added). These, then are the basic requirements which an applicant must establish before he can be granted a construction permit. (*Stahlman v. Federal Communications Commission*, 75 U.S. App. D.C. 176; 126 F.2d 124 (1941)). The specific requirements as contained in FCC Form 301 are merely for the purpose of aiding the Commission in determining that the requirements of Section 308 (b) have been met.

However, in establishing these requirements, Congress was also fully cognizant that applications as filed by prospective licensees might not contain complete information upon their initial filing and so a provision was included in Section 308(b) of the statute which provided that the

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<sup>10</sup> No question was raised by the License Division with respect to the engineering proposal in the return letter of May 7, 1959; thus, it must be concluded that the engineering statement satisfied in every respect the initial review of the Commission.

Commission "at any time after the filing of such original application . . . may require from the applicant . . . further written statements of fact to enable it to determine whether such original application should be granted or denied . . ." (emphasis added). It is important to recognize that there is no mention of any alternative procedure available to the Commission once the basic essentials referred to in the Act have been set forth by the applicant. In such a case, if the Commission cannot "grant" an application, it must follow the requirements of Section 309(b) which has no provision for the "return" of an application but only for its grant or denial.<sup>11</sup>

Section 309(b) provides that if the Commission, upon an examination of any application, cannot find that a grant of the application can be made, " . . . it shall forthwith notify the applicant and other known parties in interest of the grounds and reasons for its inability to make such finding" (emphasis added).<sup>12</sup> Therefore, where the application has met the essential jurisdictional requirements<sup>13</sup> of the Act (i.e., citizenship and verification), and has made a showing as to the "guideposts" found in Section 308(b), the only procedure which the Commission can follow, if it is unable to grant the application, is to notify the applicant of the reasons and grounds therefor, and if, upon the applicant's reply, the Commission is still unable to make the grant of the applicant, it must formally designate the application for hearing on the grounds and reasons then obtaining. It cannot "return" the application.

<sup>11</sup> In Broadcasting Service Organization v. F.C.C., 84 U.S. App. D.C. 152, 171 F.2d 1007 (1949) (Reversed in 337US907 (1949) on other grounds) this court said that " . . . we believe that the most accurate guides for determining legislative intent and purpose are the words themselves which were enacted into law, provided those words are unambiguous and unequivocal . . ." The wording of Sections 308(b) and 309(b) is clear and unequivocal.

<sup>12</sup> The purpose of Section 308(b) is recognized by the Commission in Rule 1.354 (1) which provides that "Where an application is reached for processing, and it is necessary to address a letter to the applicant asking further information, the application will not be processed until the information requested is received, and the application will be placed in the pending file to await the applicant's response.

<sup>13</sup> The Commission did not find any jurisdictional defects in the Radio Cabrillo application so as to render the entire application void or incomplete (JA ).



Here, however, Radio Cabrillo application was returned along with a letter informing it of the grounds and reasons why its application could not be granted as a final act and not as a preliminary procedure to designation for hearing. This was done on the theory that pursuant to Section 1.306(a) of the Commission's Rules the Radio Cabrillo application was not "substantially complete."<sup>14</sup>

In other words, the Commission completely ignored the requirements of Section 309(b) and substituted therefor a regulation of its own. Since Sections 308(b) and 319(a) of the Communications Act provide that applications shall set forth facts as the Commission by regulation may prescribe as to citizenship, character, financial, technical, and other qualifications of the applicant to operate the station, the Commission's power to make and interpret its rules and regulations must not be exercised in a manner inconsistent with the public interest as reflected in the Communications Act. Indeed, as this court pointed out in the case of Heitmeyer v. Federal Communications Commission (61 U.S. App. D.C. 273; 95 F.2d 91 (1937)) "convenience of administration cannot be permitted to justify noncompliance with the law or the substitution of fiat for adjudication." The fact that the Commission is to protect the individual applicant and not take actions based solely on its own desires was thus made clear.

In Ashbacker Radio Corporation v. F.C.C., 326 U.S. 327, 90 L.Ed. 108, the Supreme Court indicated that under Section 309(a), the Commission must grant an applicant a hearing before his application is denied. In this case, a procedural rule has been used to (a) thwart the specific and direct mandate of Congress and (b) deny the rights heretofore protected under the Ashbacker case, since Radio Cabrillo's application was mutually exclusive with those of Radio Atascadero and Cal-Coast Broadcasters.

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<sup>14</sup> The matter of "substantial completeness" is fully discussed beginning at paragraph III, infra.

Thus, the action by the Commission was clearly contrary to the direct mandate of Section 309(b) as set forth in the Communications Act of 1934, as amended. It also follows that the spirit of the Act has been violated when a procedural rule is used to effectively deny to the public a determination as to the most qualified applicant. All Radio Cabrillo wants is the opportunity to be heard on the same basis as any other applicant as provided for by Congress in the Communications Act.

## II

### THE MANNER IN WHICH THE COMMISSION PROCESSED THE TENDERED APPLICATION OF RADIO CABRILLO EFFECTIVELY DENIED THE APPLICANT A FAIR OPPORTUNITY TO BE CON- SIDERED BEFORE THE "CUTOFF" DATE OF MAY 15, 1959.

As is indicated by the necessity for this appeal, the manner in which the Commission processes applications can be crucial, for if an application, although timely filed to be considered with other applications, is returned for one reason or another, the return can amount to a denial of that application. Since the Commission has the obligation to see to it that the public interest is served, that obligation extends to the processing of applications as well as in granting applications. Thus, reasonable care and expeditious treatment of applications are essential to the public interest.

Expedition in returning applications has become a matter of utmost importance under the present cutoff rules. Without some standard of reasonableness, the Commission could hold an application for weeks and then, just before a cutoff date on a conflicting application, return it for some technical reason and thereby effectively deny that applicant's chances of being heard and the public's right to be served by the best qualified applicant.

The unreasonable delay in the return of the Radio Cabrillo application was brought to the attention of the Commission in the petition for reconsideration filed by Radio Cabrillo (JA <sup>R-75,76</sup> ). In denying that petition, the Commission offered no justification for the delay (JA <sup>R-117</sup> ). Therefore, it is for this Court to decide whether the Commission is to be held to a reasonable standard in processing applications.

In this case, the application of Radio Cabrillo was verified on April 7, 1959, two days before the Commission's announcement of the drastic changes in establishing cutoff dates. The application was received by the Commission on April 20, 1959. It was apparently processed to some extent since on April 22, 1959, two days after it was filed, the Commission publicly announced that the application had been tendered for filing. From that point on, even though it was clear that the Radio Cabrillo application was mutually exclusive with the Radio Atascadero application, which had a May 15, 1959, cutoff date,<sup>15</sup> nothing was done until May 7, 1959, some eighteen days after the application had been filed. On May 7, 1959, a letter was prepared setting forth certain defects as well as returning the Radio Cabrillo application.<sup>16</sup> That letter and the tendered application were not mailed to Radio Cabrillo, at P.O. Box 166, Santa Maria, California, until May 11, 1959.<sup>17</sup> Upon receipt, Radio Cabrillo immediately remedied the defects and the application was returned to the Commission, where it arrived on May 22, 1959.

The question, then, is whether it is reasonable for the Commission to take over three weeks after an application has been received to mail it back to the applicant, particularly when by its own notice, the Commission knew that the applicant faced a cutoff date just four days after the application was mailed by the Commission. There can be no doubt that the delay on the part of the Commission, over which the applicant has no control, was the sole reason why the Radio Cabrillo application was not returned to the Commission before May 15, 1959. Indeed, it took less time to mail the application twice across the country, and to correct the defects, than it did for the Commission to review the application. The applicant, then, clearly had no part in the delay.

<sup>15</sup> It is noted here that the letter prepared by the License Division returning the application did not mention the May 15, 1959, cutoff date or warn the applicant of any adverse effect this procedure might have on its chances when considered by the Commission at a later date (JA

<sup>16</sup> None of the defects were found to be of a major nature (JA <sup>R-1,2</sup> <sup>R-116</sup> ).

<sup>17</sup> Regular mail takes four to five days to reach Santa Maria, California.



While it is perhaps difficult for this Court to say what is unreasonable when it comes to the internal procedures of the Commission, it is nevertheless clear that the Commission should be held to some standard of reasonableness in cases where the public interest is so directly affected. Such a standard should include, at a minimum, expeditious handling of applications facing an upcoming cutoff date.

Had the Commission acted in a reasonable manner, the deficiencies could have been easily corrected either concurrently with the filing, by an amendment subsequent to the filing of the application, or the application as resubmitted could have been timely refiled. The Commission's lack of action with respect to the Radio Cabrillo application clearly indicates that the procedure by which the application was processed was arbitrary and contrary to the public interest. It must be further noted here that many applications which will be filed under the new cutoff procedure now in effect are being afforded similar treatment, and that if the Commission is permitted to continue its uncontrolled, arbitrary method of retaining applications to be processed and then returning such applications just before a cutoff date becomes effective, no applicant can be secure and the public interest will be irreparably damaged.

In view of the foregoing, it is submitted that this Court should not sanction the unreasonable and unexplained delay followed by the Commission for it cannot be said that such delay will serve the public interest.

### III

#### RETURNING RADIO CABRILLO'S APPLICATION AS NOT SUBSTANTIALLY COMPLETE WAS IMPROPER.

Assuming, arguendo, that the Commission has the arbitrary power to return applications which are tendered for filing, the returning of the Radio Cabrillo application by letter dated May 7, 1959, was arbitrary, capricious, and contrary to the public interest. The application filed by Radio Cabrillo contained the five requisite sections as discussed in paragraph I, supra. Each section was filled out, exhibits were supplied, and the applications were verified.

As heretofore mentioned, the Commission, pursuant to its own Rule, Section 1.306, as amended, has returned applications on the theory that they were not substantially complete and thus were not entitled to any consideration by the Commission. The practice of the Commission, when returning applications, has been to cite, in an accompanying letter prepared by the License Division, the various deficiencies contained on the face of the applications. The applicants then made the necessary corrections and resubmitted the applications to the Commission for filing.<sup>18</sup>

The Commission has delegated to the License Division of the Broadcast Bureau, pursuant to Section 0.17 of the Commission's Rules and Regulations, the authority to initially examine applications tendered for filing. Deficiencies are noted for each application, and on the basis of these deficiencies, if any, some are accepted for filing while others are returned to the applicants.<sup>19</sup> Those which are accepted although deficient are corrected either concurrently with the filing, by way of amendment after acceptance for filing, or by reply to a Section 309(b) letter.

It is Radio Cabrillo's position that the selection and determination process used by the License Division is clearly arbitrary and capricious for it finds no rules or regulations to guide the personnel of this Division in deciding which, if any, of the applications will be returned or to aid them in determining "substantial completeness." This question becomes critical for substantial completeness is, in fact, a legal conclusion under the initial processing procedure of the Commission.<sup>20</sup> Thus, the question

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<sup>18</sup> The only reasons given in the Commission's Public Notices during this whole period of time when returning applications tendered for filing were jurisdictional defects — (e.g., not notarized) — and/or patently defective.

<sup>19</sup> Rule 0.17 does not mention returning applications. This function is reserved to the Chief of the Broadcast Bureau by Rule 0.241(n). However, the Commission's Memorandum Opinion and Order, denying the appellant's petition stated in footnote 1, that the License Division of the Broadcast Bureau returned the application. (JA 8-113) Thus it appears that the License Division does not have the power to return applications.

<sup>20</sup> The staff of the License Division is clerical. No attorneys are assigned to it.

of the complete lack of standards becomes manifest under the circumstances which Radio Cabrillo finds itself, when its application, as a matter of law, has been denied consideration by the action of this Division.

As noted in Appendix D, the Radio Cabrillo application, according to the public release, was returned because it was "dated wrong," not because it was "substantially incomplete." The theory of substantial completeness was first raised by the Commission in its Memorandum Opinion and Order denying Radio Cabrillo's petition for reconsideration and reinstatement, when it conceded that the verification was not defective and that the later dated balance sheet, standing alone, would not void the application from further consideration by the Commission. (JA <sup>R-116</sup>)

Needless to say, Radio Cabrillo finds it difficult to attack this uncontrolled and undefined process because, in the absence of some clear standards by the Commission or the courts of what are the essential requirements for initial acceptance, the parties standing, in filing for broadcast facilities, are left solely in the arbitrary power of the Commission. The Commission's only interpretation of a lack of substantial completeness <sup>is</sup> ~~is~~ an application that is lacking in major respects. (Middleboro Broadcasting Co., Inc., 3 R.R. 273 [1946]). Thus, whether an application is fatally defective under the processing rules depends upon whether the defects are of major proportions.

The minor nature of the defects in the Radio Cabrillo application were discussed in its Petition for Reconsideration, (JA <sup>R-80</sup> paragraph 20, et seq.) As pointed out therein, there is no case precedent that holds that any of the noted defects collectively or individually, constituted a major defect or rendered an application not substantially complete. In fact, the case precedent clearly holds to the contrary.

In Lawrence A. Harvey, 9 R.R. 636 (1953), the Commission found that the following deficiencies did not affect the substantial completeness of the application: (a) Failure to provide a minimum signal over the city;



(b) main studio in a city other than the one to be served and no waiver of the rule requested; (c) possibility of more than 20% alien control; (d) violation of state law in issuing securities; (e) no bylaws; (f) no resolution of the Board of Directors authorizing the filing of an application; (g) subscription agreements lacking; (h) balance sheets of the corporation and subscribers not included; (i) net income of subscribers not indicated; and (j) business and financial interests of subscribers not revealed. It is indeed impossible to reconcile the Commission's decision in this case with the one regarding Radio Cabrillo.

Again, in Docket No. 12604, et al. of the Federal Communications Commission, the Commission's 309(b) letter to Blue Island Community Broadcasting Co., Inc. and Elmwood Park Broadcasting Corporation dated June 24, 1959, indicated the following objections to a grant of the Elmwood Park Broadcasting Corporation application: (a) The Articles of Incorporation show that the name of the applicant is "Elmwood Park Broadcasting Corporation" while the applicant has listed its name as "Elmwood Park Broadcasting Corp." on page 1 of the application (b) no bylaws submitted; (c) information incomplete regarding naturalization of certain of the stockholders, their addresses, and their business and financial interests for the past five years; (d) it was not possible to determine the number of shares of stock that have been issued and subscribed; (e) no live programming shown in the log analysis; (f) Exhibit 2B was omitted; and (g) Sections V-B and V-G pertaining to engineering, antenna and site data, and exhibits were not included in the application. (Appendix B)

In an important decision on this same question, the Commission, in Muskingum Broadcasting Company, (19 R.R. 552 [1960]) stated:

"As made abundantly clear by Section 309(b) of the Act, an application does not have to be letter perfect and contain all information necessary to convince the Commission that a grant would serve the public interest as a condition precedent to acceptance for filing. Rather, our practice has consistently been that, if an application is substantially complete, it is accepted for filing and the applicant is afforded the opportunity to supply any other necessary information by amendment."

The Muskingum application was filed initially on May 15, 1959, with a "bank" letter of credit dated after the verification in Section I of the application. Here, the Commission, following this Court's opinion in Johnston Broadcasting Co. v. F.C.C., (85 U.S. App. D.C. 40, 175 F.2d 351 (1949))<sup>21</sup> held that the "bank letter" of credit was not vital to the application and that the application could be considered without the unverified material (see, also City Cabs, Inc. v. F.C.C., \_\_\_ U.S. App. D.C. \_\_\_, 275 F.2d 165). (1960)

Muskingum's tendered application which was filed on the cut-off date of May 15, 1959, was returned by a Commission letter dated June 26, 1959, noting certain deficiencies, including the defective verification. The application was resubmitted on July 2, 1959, and by a Memorandum Opinion and Order released December 18, 1959, the Commission allowed, nunc pro tunc, the application to be filed as of May 15, 1959.<sup>22</sup> In its order the Commission noted that the other deficiencies in this application were:

- (a) The applicant had failed to answer the question whether all parties to the application were citizens of the United States.
- (b) There was a discrepancy in the engineering exhibits as to the size of the wire to be used in the ground system.
- (c) The street address of the proposed studio location was not given.
- (d) Only three copies of two exhibits to Section V-G of the application were submitted.

Once the application of Muskingum was accepted for filing, as of May 15, 1959 (the deadline under the new cutoff rule), the applicant was entitled to mutual consideration with other parties. In addition, the rights

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<sup>21</sup> In the Johnston case, the application was found to be absolutely defective from a jurisdictional standpoint. However, on remand the Commission did not return it but only considered the application to be pending though in a defective state, since its filing. (Johnston Broadcasting Co. 5 R.R. 1320 [1950]).

<sup>22</sup> The applications with which Muskingum was eventually consolidated had been designated for hearing on October 21, 1959.



to a McFarland letter (309[b]) accrued. In this letter which was written on April 14, 1960, after disclosing to the applicant (Muskingum) the names of the parties which would receive objectionable electrical interference from its proposal, the Commission listed additional reasons why the application could not be granted. They were:

"Pursuant to the provisions of Section 3.28(c) of the Rules, the applicant has failed to indicate that the percentage of population loss from existing stations is less than 10%.

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"It is requested that a large scale horizontal plane pattern be submitted clearly indicating calculated and MEOV's of radiation in the null areas for the arc N20° E to N90° E true. Also the horizontal pattern tabulations are inconsistent with the horizontal pattern depicted by Fig. 4 of the application, and therefore a completely revised horizontal pattern must be submitted.

#### "Financial

"The Commission considers an applicant financially qualified when an applicant has established that it has sufficient funds to construct the station and operate it for a reasonable period of time. Therefore, information is required showing that cash or liquid assets are available in an amount to cover the cost of the equipment, or the downpayment thereon if purchased on deferred credit, cost of land and buildings, miscellaneous expense which includes labor and supervision in connection with installation of equipment and construction costs, professional fees, mobile equipment, etc., plus at least three months working capital.

"It is noted that George R. Rising and John P. Carr plan to purchase capital stock and lend funds to the applicant and that Earl M. Johnson has furnished and will furnish engineering services in payment for his capital stock. The information associated with this application appears to be incomplete for the following reasons: (1) the subscription agreements of Messrs Rising and Carr have not been signed under oath, nor has an agreement been furnished by Earl M. Johnson; (2) plans which anticipate loans from stockholders require agreements, signed under oath, from the party or parties who have agreed to lend funds or perform services, showing the amount involved, terms of payment and security; and (3) the bank loan commitment fails to show terms of repayment and security to be posted for the loan. In connection with the above discrepancies, attention is



directed to Section III, Paragraph 4(c)(d) and (h) of the application form. In the event the stockholders plan to secure cash through the sale of securities or other assets, information showing the kind and amount of such securities the stock exchange on which the stock is listed and/or the basis for the ready marketability of such other asset must be furnished. If plans include the purchase of equipment on deferred credit, a showing from the equipment manufacture that credit has been extended extended to the applicant showing the amount involved, terms of payment and security, must be furnished in compliance with Section III, Paragraph 4(h).

"Comments

"It appears that a discrepancy exists with respect to the exact number of corporate shares subscribed to. Section II, paragraph 11 of the application form indicates that 90 shares have been subscribed to, while Table I, Section II of said form indicates the number to be 100. It is further noted that the subscription agreements of Messrs. Rising and Carr, submitted along with the application (see Financial comment above) show only 90 shares subscribed to. Clarification of this matter is requested."

The Commission, in denying Radio Cabrillo's petition for reconsideration and reinstatement, did not declare that any of the deficiencies were fatal or even major in nature.<sup>23</sup> None of them posed any jurisdictional problem and these minor deficiencies could have been easily remedied in a reply to a Section 309(b) letter, or by amendment to the application.

The minor nature of the defects in the Radio Cabrillo application were discussed in its Petition for Reconsideration (JA <sup>B-80</sup> paragraph 20, et seq). As pointed out therein, there is no case precedent that holds that any of the noted defects were of a major nature and in those cases such as Lawrence A. Harvey, Blue Island Community Broadcasting Co., Inc. and Muskingum Broadcasting Company, supra, a combination of defects, even where jurisdictional problems were involved, were not found to make an application not substantially complete.

<sup>23</sup> In support of its position, the Commission did not, and indeed could not, cite one single case. Instead, it made reference to several letters from its files written by the License Division.

In addition to those referred to above, there are a myriad of cases,<sup>24</sup> where the Commission has determined that, although the applications left much to be desired, they were sufficiently complete for processing, and thus concluded that amendments could be submitted or that the matter could be resolved in a hearing room. In the case of applications which have been accepted for filing, the Commission has allowed amendments at will to correct deficiencies (except engineering under the new cutoff procedure) and even permits up to a fifty per cent change in an applicant's ownership without considering it a new application (Rule 1.354(h)(2)).

It is not the purpose of Radio Cabrillo to belabor the Court with the many fact patterns which have arisen under the processing procedure, but it is its purpose to point out that the Commission has accepted applications where there have been major and even jurisdictional defects. In such cases the applicant was given an opportunity to correct the application while it was being processed or in a reply to a Section 309(b) letter. The same treatment should have been afforded to Radio Cabrillo for individually or collectively the defects were minor in nature and did not render its application not substantially complete.

In further demonstration of the arbitrary action of the Commission in this case, there are appended to this brief other examples of letters prepared by the License Division pointing out deficiencies in applications which have been accepted for filing. (Appendix B).

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<sup>24</sup> The following cases were considered by the Commission although deficiencies existed: Southern Television, Inc., 8 R.R. 872 (1953), for financial; Lou Poller, 9 R.R. 624 (1953), for financial and real party in interest; Lawrence A. Harvey, 9 R.R. 636 (1953), for legal, financial, technical and others; M & M Broadcasting Co., 9 R.R. 905 (1953), for financial; and Montana Network, 6 R.R. 445 for financial. See, also, Teleservice Co., 17 R.R. 981 (1958), when an unverified Section II was supplied after the filing of the application, and again in Hamtramck Radio Corp., 6 R.R. 43 (1950), where the engineering report was dated subsequent to Section I; in Middlesboro Broadcasting Co., Inc., 3 R.R. 273 (1946) the Commission accepted an application in which the Articles of Incorporation were not properly certified. See also Hearst Radio, Inc. 3 R.R. 731 (1946) no program schedule; Midland Broadcasting Co. 3 R.R. 1961 (1948) engineer's affidavit defective, WCAR, Inc. 4 R.R. 160 (1948), questions not answered; Granite City Broadcasting Co., 4 R.R. 1322 (1949), engineering verified after Section I affidavit; Independent Television, Inc., 10 R.R. 1193 (1954), defective affidavit.

## IV

IN THAT THEY WERE ADOPTED IN A MANNER CONTRARY TO SECTIONS 4(a) AND 4(b) OF THE ADMINISTRATIVE PROCEDURE ACT SECTIONS 1.106(b)(1) AND 1.361(b) OF THE COMMISSION'S RULES, UNDER WHICH APPELLANT'S APPLICATION WAS DISMISSED, ARE INVALID.

The Commission's dismissal of Radio Cabrillo's application on December 22, 1959, was based on Rule 1.106(b). The provisions of that Rule were contained in the Commission's notice of April 9, 1959, announcing the new method of establishing cut-off dates. That notice also contained an amendment to Rule 1.361(b) and to the related Rule 1.354 restricting and in practical effect eliminating amendments to applications. Both of these amendments became effective on May 15, 1959. These amendments were effectuated without benefit of the rule making procedural requirements set forth in Sections 4(a) and 4(b) of the Administrative Procedure Act (60 Stat. 237, 5 U.S.C. 1001 et. seq.) on the theory that they were "procedural" in nature (18 RR 1565).

Section 4(a) of the Administrative Procedure Act provides, with stated exceptions, that every agency is required to give public notice of substantive rules which it proposes to adopt. In addition, an agency is required to grant interested parties an opportunity to give their views on the question at hand. Here, the Commission gave neither formal nor informal notice of the proposed changes. The threshold question presenting itself then is whether the amendments are in fact procedural or substantive. If they are substantive, the Commission has violated the requirement which guarantees public participation in rule making proceedings. If purely procedural and reasonable in nature, no violation of the Administrative Procedure Act has occurred. But serious questions affecting the public interest can remain where a "procedural" rule has the effect of denying applications or affecting rights, since such matters are of a substantive nature.



Radio Cabrillo is in accord with the objectives of the Commission, i.e., to speed up the processing of applications pending determination by that agency, but submits that the so called "procedure" is not in the public interest because of its arbitrary nature and its lack of reasonable relationship to the protection of the Commission's administrative process.

The amendment contained in the April 9, 1959, notice establishing Rule 1.106(b)(1) conflicts with the right of the public to have adequate notice of applications before they achieve a protected status. Under that Rule, any application or series of applications that are filed on the cut-off date of an application contained on the Commission's list will be placed in a protected status, without prior public notice, if those applications happen to conflict<sup>with</sup> or have an interference problem with the application on the list. This can also occur as a result of a chain reaction in the following manner. If application A is on the list, and applications B, C and D are filed on or before the cut-off date, it is entirely possible that application D would not be involved directly with A. But if B has an interference problem with A and C has an interference problem with only B and D has an interference problem with only C, all the applications are given a protected status even though no one could foresee that such would happen.

Under the old procedure, the time of designation controlled the cut-off date and if an application was filed just before other applications were designated, it did not achieve a protected status until it too was designated. Thus the public had reasonable advance notice of each application before it reached a protected status.

That at least thirty days is necessary for reasonable notice is recognized by the Commission in Rule 1.354(b) which provides that the Commission will not act on applications for new stations until thirty days after the date on which "public notice" is given by the Commission of acceptance for filing of such application.

There is no discernable difference between the "action" taken in the old method of designating an application for hearing and thereby giving it a protected status and the new rule which permits a protected status to automatically apply to applications directly or indirectly involved with an application contained on the cut-off list. Moreover, even if there is a difference, the right of the public to at least thirty days advance notice is nevertheless controlling.<sup>25</sup> Since this is a right, the amended Rule 1.106(b)(1) was not merely procedural in nature. Therefore, the requirements of Section 4(a) and 4(b) of the Administrative Procedure Act should have been followed.

The rule restricting engineering amendments (Rule 1.354(b)) is contrary to the intent and purpose of Section 309(b) of the Communications Act, as amended. Under Section 309(b), Congress directed the Commission to inform the applicant of all known objections which the Commission has to a grant of its application. Since this section of the Act was specifically designed to afford an applicant the opportunity to correct any deficiencies in his application prior to its being designated for formal hearing, the reply must be given the full protection of the Act. According to consistent administrative practice, the right to reply has been construed to include the right to amend the application. However, under Rule 1.354(b) if an applicant, to remove stated objections by the Commission to its engineering proposal, amends his application in response to the 309(b) letter, except under restrictive conditions,<sup>26</sup> the Commission will assign the application a new file number and will treat it as a new application. As a result, all rights to mutually exclusive consideration under Ashbacker, supra, will be withdrawn. Thus, the substantive rights of an applicant are wholly withdrawn by what the Commission calls a procedural rule.

<sup>25</sup> The lack of "reasonable" notice was also present in the establishment of the first cut-off list where 267 applications plus other applications involved with those on the list, achieved a protected status on only thirty days notice.

<sup>26</sup> This section was even more restrictive before April 1, 1960 (18 RR 1565; 19 RR 1599).

## V

THE AMENDED RULES HAVE NO REASONABLE RELATIONSHIP  
TO ORDERLY ADMINISTRATIVE PROCESS.

In addition to the foregoing, the amended rules 1.106(b)(1) and 1.361(b) have no reasonable relationship to the Commission's orderly administrative process in the sense that such process is basically for the purpose of serving the public interest as set forth in the Communications Act. Fair play is one of the fundamentals of a procedural rule. (Federal Communications Commission v. Pottsville Broadcasting Co., 309 U.S. 134, 60 S.Ct. 437, 84 L.Ed. 656). Where applications are involved that applicants have expended considerable money and effort on, and where the public is entitled to receive service from the best qualified applicant, fair play includes a reasonable opportunity for applicants to file competing applications before some other application reaches a protected status.

However, the amended rules, as noted heretofore, permit applications to reach a protected status without any prior notice to the public. The rule then is not one that merely sets out a procedure but is one that is for the express purpose of cutting off competing applications. While it is not argued that the Commission does not have the right to establish a cut-off procedure, it is submitted that the method adopted was not necessary for the orderly processing of applications but was adopted solely for the purpose of "cleaning house" with respect to applications on the processing line (18 RR 1565). A less drastic method could accomplish the same purpose without doing violence to the fundamentals of fair play and to the public interest.



## CONCLUSION

Wherefore, the appellant prays that this Honorable Court set aside, vacate, annul, and determine to be invalid (a) the action of the Federal Communications Commission of April 4, 1960 denying Radio Cabrillo's "Petition for Reconsideration and Reinstatement of Application Nunc Pro Nunc, as of April 20, 1959 or May 15, 1959, and for other relief" and (b) the action of December 22, 1959 dismissing the application of Radio Cabrillo, and remand this case to the Commission with directions to reinstate the Radio Cabrillo application as of April 20, 1959 or May 15, 1959.

Appellant further prays that this Honorable Court set aside, vacate, annul and determine to be invalid the amended Sections 1.106(b)(1) and 1.361(b).

Respectfully submitted,

RICHARD HILDRETH

1023 Munsey Building  
Washington 4, D. C.

Attorney for:  
James H. Ranger,  
William R. Sinclair, and  
Ed J. Zuchelli, d/b as  
RADIO CABRILLO

Of Counsel:

Spearman and Roberson  
1023 Munsey Building  
Washington 4, D. C.

October 1, 1960

## APPENDIX A

Communications Act of 1934, as amended,

Section 308(b), 47 U.S.C. §308(b):

All applications for station licenses, or modifications or renewals thereof, shall be forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee under oath or affirmation.

Section 309(a), 47 U.S.C. §309(a):

If upon examination of any application provided for in Section 308 of this title the Commission shall find that public interest, convenience and necessity would be served by the granting thereof, it shall grant such application.

Section 309(b), 47 U.S.C. §309(b):

If upon examination of any such application the Commission is unable to make the finding specified in subsection (a) of this section, it shall forthwith notify the applicant and other known parties in interest of the grounds and reasons for its inability to make such finding. Such notice, which shall precede formal designation for a hearing, shall advise the applicant and all other known parties in interest of all objections made to the application as well as the source and nature of such objections. Following such notice, the applicant shall be given an opportunity to reply. If the Commission, after considering such reply, shall be unable to make the finding specified in subsection (a) of this section, it shall formally designate the application for hearing on the grounds or reasons then obtaining and shall notify the applicant and all other known parties in interest of such action and the

grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. The parties in interest, if any, who are not notified by the Commission of its action with respect to a particular application may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest at any time not less than ten days prior to the date of hearing. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate but in which both the burden of proceeding with the introduction of evidence upon any issue specified by the Commission, as well as the burden of proof upon all such issues, shall be upon the applicant.

Section 310, 47 U.S.C. §310:

(a) The station license required hereby shall not be granted to or held by —

- (1) Any alien or the representative of any alien;
- (2) any foreign government or the representative thereof;
- (3) any corporation organized under the laws of any foreign government;
- (4) any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;
- (5) any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted, after June 1, 1953, by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or the revocation of such license.

Nothing in this subsection shall prevent the licensing of radio apparatus on board any vessel, aircraft, or other mobile station of the United States when the installation and use of such apparatus is required by Act of Congress or any treaty to which the United States is a party.



Section 319(a), 47 U.S.C. §319(a):

No license shall be issued under the authority of this Act for the operation of any station the construction of which is begun or is continued after this Act takes effect, unless a permit for its construction has been granted by the Commission. The application for a construction permit shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and the financial, technical, and other ability of the applicant to construct and operate the station, the ownership and location of the proposed station and of the station or stations with which it is proposed to communicate, the frequencies desired to be used, the hours of the day or other periods of time during which it is proposed to operate the station, the purpose for which the station is to be used, the type of transmitting apparatus to be used, the power to be used, the date upon which the station is expected to be completed and in operation, and such other information as the Commission may require. Such application shall be signed by the applicant under oath or affirmation.

Commission Rules and Regulations:

Section 0.17. License Division. — The License Division exercises responsibility for the receipt, initial examination, filing, indexing, recording and routing of all applications in the broadcast services; the clerical functions with respect to the issuance of broadcast authorizations; and for the maintenance of a public reference room in cooperation with the Docket Division of the Office of the Secretary where public information with respect to all broadcast matters and all docketed proceedings may be examined.

Section 0.241(n) & (o):

(n) To dismiss or return applications or petitions which are not acceptable under Commission rules.

(o) To notify each applicant whose application does not comply with the Commission's rules and regulations as to the grounds and reasons for the Commission being unable to find that the grant of the application would serve the public interest.

Section 1.106(b)(1):

(1) In broadcast cases, no application will be consolidated for hearing with a previously filed application or applications unless such application, or such application as amended if amended so as to require a new file number, is substantially complete and tendered for filing

by whichever date is earlier: (i) the close of business on the day preceding the day the previously filed application or one of the previously filed applications is designated for hearing; or (ii) the close of business on the day preceding the day designated by public notice published in the Federal Register as the day any one of the previously filed applications is available and ready for processing.

NOTE: Subdivision (ii) of this subparagraph applies only to standard broadcast applications for new stations or for major changes in the facilities of authorized stations. See also Section 1.354(c) and (h) and Section 1.361(b).

#### Section 1.306:

Acceptance of applications. — (a) Applications which are tendered for filing in Washington, D. C. are dated by the Office of the Secretary upon receipt and then forwarded to the Broadcast Bureau where an administrative examination is made to ascertain whether the applications are complete. Applications found to be complete or substantially complete are accepted for filing and are given a file number. In case of minor defects as to completeness, the applicant will be requested to supply the missing information. Applications which are not substantially complete will be returned to the applicant.

(b) Acceptance of an application for filing merely means that it has been the subject of a preliminary review by the Commission's administrative staff as to completeness. Such acceptance will not preclude the subsequent dismissal of the application if it is found to be patently not in accordance with the Commission's rules.

(c) At regular intervals the Commission will issue a "Public Notice" listing all applications and major amendments thereto which have been accepted for filing.

#### Section 1.322:

Application forms for authority to construct a new station or make changes in an existing station. —

(a) Applications for new facilities or modification of existing facilities shall be made on the following forms:

(1) FCC Form 301 "Application for Authority to Construct a New Broadcast Station or Make Changes in an Existing Broadcast Station."

Section 1.354(b):

II. \* \* \* A. \* \* \*

(b) The Commission will not act on applications in paragraph (a)(1) of this section until 30 days after the date on which "Public Notice" is given by the Commission of acceptance for filing of such application. If an application is amended so as to require a new file number (See paragraph (h) of this section), the Commission will take no action until 30 days have elapsed since the date on which "Public Notice" is given of the acceptance for filing of such amendment. Where a later filed application, or an application as amended so as to require a new file number, is in conflict with another application, the 30-day limitation shall be applicable only to the earlier of the conflicting proposals.

Section 1.354(h):

(h)(1) A new file number will be assigned to an application for a new station or for major changes in the facilities of authorized stations when it is amended to change its engineering proposal other than with respect to the type of equipment specified.

(2) A new file number will be assigned to an application for a new station when it is amended to specify a change in ownership as a result of which one or more parties with an ownership interest in the original application do not have, on a collective basis, a 50 percent or more ownership interest in the amended application. (3) An application for changes in the facility of an existing station will continue to carry the same file number although an assignment of license or transfer of control of said licensee (permittee)-applicant has been consented to by the Commission, provided the application for changes in facility (FCC Form 301) is amended jointly by the assignor and assignee or transferor and transferee, upon consummation of the assignment or transfer to reflect the ownership changes and to include the financial and programming proposals of the new licensee (permittee)-applicant.

Section 1.361(b):

(b) In making its determinations pursuant to the provisions of paragraph (a) of this section, the Commission will not consider any other application, or any other application as amended if amended so as to require a new file number, as being mutually exclusive or in conflict with the application under consideration unless such other



application was substantially complete and tendered for filing by whichever date is earlier: (1) the close of business on the day preceding the day on which the Commission takes action with respect to the application under consideration; or (2) the close of business on the day preceding the day designated by public notice in the **FEDERAL REGISTER** as the day the application under consideration is available and ready for processing.

NOTE: Paragraph (b)(2) of this section applies only to standard broadcast applications for new stations or for major changes in the facilities of authorized stations. See also Sections 1.106(b)(1) and 1.354(c) and (h).

APPENDIX B

July 22, 1960

8720

Dwight M. Cleveland  
Secretary-Treasurer  
Fine Music, Inc.  
3605 Pleasant Ridge Road  
Montgomery, Alabama

New FM broadcast station of Montgomery, Alabama,  
accepted for filing and assigned File No. BPH-3602.

However, Exhibit C, the balance sheet is being returned  
herewith in order that it may be filed in the form of an  
amendment to the application. It is noted that the balance  
sheet is dated June 30, 1960, whereas Section I of the  
application was signed and sworn to as of June 28, 1960.  
All sections and exhibits must be dated the same as, or  
prior to, the verification of Section I of the application.

It will be necessary to submit three copies of the By-  
Laws of the Corporation, one copy must be properly  
certified, as required by Paragraph 3 of Section II.

It is also noted that Table II of Section II is incomplete  
inasmuch as the occupations for the past five years of  
Messrs. Isaac H. Cohen and Dwight M. Cleveland are not  
shown in Column (c) as required.

\* \* \*

---

May 24, 1960

8720

8831

Southwest Broadcasting Company, Inc.  
9025 Wilshire Boulevard  
Los Angeles, California

Gentlemen:

Reference is made to your application for a change in the facilities  
of Station KCAL, Redlands, California. The applicant has been accepted  
for filing and assigned File No. BP-14,136.

A preliminary examination of your application indicates the follow-  
ing:

1. An allocation study, as required by Paragraph 12 B(1) of Section V-A of the application form was not submitted.
2. No study submitted with respect to Mexican Station XEXX or a ratio basis of 2/1.
3. No data submitted pursuant to paragraph 12 c(2) and (6) of Section V-A.
4. Exhibits submitted are distorted.
5. Each exhibit submitted pursuant to Paragraph 12 and 13 of Section V-A should be separately designed.
6. A discrepancy appears between the ground system on Page 7 of the Engineer's Statement and Figure 5. This should be corrected accordingly.

Thus, it appears necessary that revised and complete data be submitted by the deadline date set forth in the enclosed Public Notice.

Failure to comply with the engineering requirements of the application form after May 25, 1960 would render such a proposal subject to return to the applicant or, if accepted for filing, subject to dismissal when reached for processing.

\* \* \*

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May 18, 1960

8720

Mr. Juan Mercado  
Radio Station KGST  
1244 O Street  
Fresno, California

Dear Sir:

This is with reference to the application submitted on FCC Form 301 requesting a construction permit to increase the power of Radio Station KGST, Fresno, California, from 1 Kw to 5 Kw, daytime hours of operation and installation of a new RCA, Type No. BTA-5F, Broadcasting Transmitter.

The application has been accepted for filing and assigned File No. BP-14,149, however, the following corrections and additional information must be submitted to complete the application.

It will be necessary to amend Section I of FCC Form 301 to delete all reference to the name Jeanne Bacher tr/as Radio Station KGST, Delle Broadcasting Co. Further, the enclosed copies of Section IV must be completed to show your proposed programming for a proposed typical week of operation, when using the requested 5 Kw power. Complete paragraph 1(b), 2(b), 3(b), 6, 7, 9, and 12, along with the program schedule as required by paragraph 2(b).

\* \* \*



B-3

April 7, 1960

8720

Lake Zurich Broadcasting Company  
c/o Mr. William Emery, President  
111 W. Monroe Street  
Chicago 3, Illinois

Dear Sir:

Reference is made to the application for construction permit for new standard broadcast station in Lake Zurich, Illinois, which was accepted for filing and assigned File No. BP-13825.

It will be necessary to amend Section I of the application to show the applicant name exactly as it appears in the Articles of Incorporation with the word "Company" spelled out in full.

The By-Laws of the Corporation have not been properly certified to as required by paragraph 3b, Section II. It is requested that one copy of the proper certification of these By-Laws be submitted. Further, Column C of Table I fails to indicate the officers of the Corporation.

It is noted that the financial statements of Mr. Henry C. Sass and Mrs. Margaret Rahmel do not include the two years net income. (See paragraph 4(f), Section III.)

The amendment which was submitted in response to the Commission letter dated March 11, 1960, with respect to coordinates, is being returned inasmuch as the coordinates are still in error for the site specified in the application. Also, the amendment has not been notarized as required.

\* \* \*

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April 17, 1959

8831

Mr. Robert F. Neathery  
P. O. Box 553  
West Plains, Missouri

Dear Sir:

Reference is made to your application for a construction permit to erect a new standard broadcast station at Houston, Missouri. The application has been accepted for filing and assigned File No. BP-12913.

It is requested that the percentage in paragraph 2(b) of Section IV be recomputed so that it totals 100%. Also, the Program Schedule submitted with your application fails to indicate the class of each program in accordance with the program classification stated on Page 4, Section IV. Further, please indicate whether the same program will be used seven days a week.

You failed to include with your application, Exhibit 3 (detailed balance sheet and net income for past two years.) It will be necessary to answer Paragraph 6, Section IV regarding affiliation with any network.

\* \* \*

---

March 25, 1959

8831

Mr. Robert H. Thompson, Sr.  
tr/as Ocllor Broadcasting System  
Box 237  
Savannah Beach, Georgia

Dear Sir:

Reference is made to your application for a construction permit to erect a new standard broadcast station at Ocilla, Georgia. The application has been accepted for filing and assigned File No. BP-12845.

It is noted that you failed to complete Table I, Section II, column (a) to show the street address of your home.

Further, the proposed Program Schedule submitted with your application fails to indicate the Class of each program in accordance with the program classification stated on Page 4, Section IV.

\* \* \*

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July 28, 1960

8720

Mr. Peter L. Arnow tr/as  
Drexol Hill Associates  
14 Fairfield Drive  
Morristown, New Jersey

Dear Sir:

Reference is made to your application for construction permit for a new FM broadcast station at Dover, New Jersey. The application has been accepted for filing and assigned File No. BPH-3092.

However, Exhibit #1, the statement of ownership, and exhibit #2, the balance sheet, are being returned herewith in order that they may be filed in the form of an amendment to the application. It is noted that both the statement of ownership and the balance sheet are dated July 15, 1960, whereas Section 1 of the application was signed and sworn to as of July 14, 1960. All sections and exhibits must be dated the same date as, or prior to, the verification of Section I of the application.

The above-mentioned exhibits should be submitted in the form of an amendment, in triplicate, properly signed by the applicant before a notary public, in accordance with Section 1.303 of the Commission's Rules.

\* \* \*

DOCKET 12604, et al.

June 24, 1959

8832

Blue Island Community Broadcasting  
Elmwood Park Broadcasting Corp.  
Mrs. Evelyn R. Chauvin Schoonfield  
Mr. Edward Krupkowski

Gentlemen and Madam:

\* \* \* \* \*

Further objections to a grant of the Elmwood Park Broadcasting Corporation application are raised because of the following: It is noted that the Articles of Incorporation show that the name of the applicant is "Elmwood Park Broadcasting Corporation", while the applicant has listed its name as "Elmwood Park Broadcasting Corp." on page 1 of the application. It is also noted that no by-laws were submitted and that certain other portions of the application are incomplete in that information regarding the naturalization of certain of the stockholders, their addresses, and their business and financial interests for the past five years, were not furnished. Further, the Commission is unable to determine precisely how many shares of stock have been issued and subscribed since the figures listed in Table I do not appear to be correct. It also appears that no live programming is shown in the program log analysis. Finally, it appears that Exhibit 2B was omitted and Section V-B and V-G pertaining to engineering, antenna and site data and exhibits were not included in the application.

\* \* \*



## APPENDIX C

F.C.C. Form 301 of Radio  
Cabrillo Tendered For Fil-  
ing on April ~~22~~<sup>20</sup>, 1959 Minus  
Exhibits and Section V (En-  
gineering)

Section I

UNITED STATES OF AMERICA  
FEDERAL COMMUNICATIONS COMMISSION

APPLICATION FOR AUTHORITY TO CONSTRUCT A NEW BROADCAST  
STATION OR MAKE CHANGES IN AN EXISTING BROADCAST STATION

INSTRUCTIONS

A. This form is to be used in applying for authority to construct a new AM (standard), commercial FM (frequency modulation), or television broadcast station, or to make changes in existing broadcast stations. This form consists of this part, Section I, and the following sections:

Section II, Legal Qualifications of Broadcast Applicant

Section III, Financial Qualifications of Broadcast Applicant

Section IV, Statement of Program Service of Broadcast Applicant

Section V-A, Standard Broadcast Engineering Data

Section V-B, FM Broadcast Engineering Data

Section V-C, Television Broadcast Engineering Data

Section V-G, Antenna and Site Information

B. Prepare three copies of this form and all exhibits. Send to one copy of Section I. Prepare two additional copies (a total of five) of Section V-G and associated exhibits. File all the above with Federal Communications Commission, Washington 25, D. C.

C. Number exhibits serially in the space provided in the body of the form and list each exhibit in the space provided on page 2 of this Section. Show date of preparation of each exhibit, antenna pattern, and map, and show date when each photograph was taken.

D. The name of the applicant stated in Section I hereof shall be the exact corporate name, if a corporation; if a partnership, the names of all partners and the name under which the partnership does business; if an unincorporated association, the name of an executive officer, his office; and the name of the association. In other Sections of the form the name need be only sufficient for identification of the applicant.

E. Information called for by this application which is already on file with the Commission (except that called for in Section V-G) need not be refilled in this application provided (1) the information is now on file in another application or FCC Form filed by or on behalf of this applicant; (2) the information is identified fully by reference to the file number (if any, the FCC form number, and the filing date of the application or other form containing the information and the page of paragraph referred to, and (3) after making the reference, the applicant states: "No change since date of filing." Any such reference will be considered to incorporate into this application all information, confidential or otherwise, contained in the application or other form referred to. The incorporated application or other form will thereafter, in its entirety, be open to the public.

F. This application must be executed by applicant, if an individual; by a partner of applicant, if a partnership; by an officer of applicant, if a corporation or association; or by attorney of applicant only under conditions shown in Section 1.303, Rules Relating to Practice and Procedure, in which event satisfactory evidence of disability of applicant or his absence from the Continental United States and authority of attorney to act must be submitted with application.

G. Before filling out this application, the applicant should familiarize himself with the Communications Act of 1934, as amended, Parts 1, 2, 3 and 17 of the Commission's Rules and Regulations and the Standards of Good Engineering Practice.

H. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE, SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.

File No.

Name and post office address of applicant (See Instruction D)

James H. Ranger and  
Ed John Zuchelli  
William Robert Sinclair  
Radio Cabrillo  
P.O.Box 166  
Santa Maria, Calif.

Send notices and communications to the following-named person at the post office address indicated if different than above

1. Requested facilities

| Frequency | Channel No. | Power in kilowatts | Minimum hours operation daily |
|-----------|-------------|--------------------|-------------------------------|
| 1480      |             | 500                | 10 hrs                        |
|           |             | Night              | Day                           |

Hours of operation

|              |                                 |                 |
|--------------|---------------------------------|-----------------|
| Unlimited    | Sharing with (Specify Stations) | Other (Specify) |
| Daytime only |                                 |                 |
| Limited      |                                 |                 |

Standard AM  
Type of station (as Standard, FM, Television)

Station location  
City State  
Atascadero California

2. If authority to make changes in an existing station is requested

(a) Present facilities

| Frequency | Call | Channel No. | Power in kilowatts | Minimum hours operation daily |
|-----------|------|-------------|--------------------|-------------------------------|
|           |      |             | Night              | Day                           |

Hours of operation

|              |                                 |                 |
|--------------|---------------------------------|-----------------|
| Unlimited    | Sharing with (Specify Stations) | Other (Specify) |
| Daytime only |                                 |                 |
| Limited      |                                 |                 |

Station location

City State

(b) If this application is for changes in an existing authorization, complete Section I and any other sections necessary to show all substantial changes in information filed with the Commission in prior applications or reports. In the spaces below check Sections submitted herewith and as to Sections not submitted herewith refer to the prior application or report containing the requested information in accordance with Instruction E. (If contemplated expenditures are less than \$5,000, complete paragraph 1 of Section III only. Section IV is not required for applications for minor changes not involving change in power, change in frequency, change in hours of operation, or moving from city to city.)

Section No. Para. No. Reference (File or Form No. and Date)

☐ Section II

☐ Section III

☐ Section IV

☐ Section V

Have there been any substantial changes in the information incorporated in this application by reference in this paragraph?

Yes ☐ No ☐

3. If this application is contingent on the grant of another pending application, state name of other applicant and file number of other application.

None  
Missed

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from the original bound volume



The applicant hereby waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934).

The applicant represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

All statements made in the application and attached exhibits are considered material representations, and all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

The applicant, or the undersigned on the applicant's behalf, states that he has endeavored to supply full and correct information as to all matters which are relevant to this application and that he has done so as to all matters within his own knowledge.

Dated this 7 day of April, 1959.

Rudis Catillo  
(Name of Applicant)

By James H. Ranger  
Partner  
Title

Subscribed and sworn to

before me this 7 day of April, 1959.

Oliver Spaulding  
Notary Public

(Notary public's seal must be affixed where the law of jurisdiction requires, otherwise state that law does not require seal.)

My commission expires July 12, 1959

If applicant is represented by legal or engineering counsel, state name and post office address:

EXHIBITS furnished as required by this form:

| Exhibit No. | Section and Para. No. of Form | Name of officer or employee (1) by whom or (2) under whose direction exhibit was prepared (show which) | Official title |
|-------------|-------------------------------|--------------------------------------------------------------------------------------------------------|----------------|
| 1           | Sec.2<br>Para 3<br>301        | James H. Ranger<br>Partnership Agreement                                                               | Partner        |
| 2           | Sec.2<br>Para 22(D)<br>301    | James H. Ranger<br>Option on Land-5.32 acres<br>Atascadero, Calif.                                     | "              |
| 3           | Sec.3<br>Para 2B<br>301       | James H. Ranger<br>William R. Sinclair<br>Ed J. Zuchelli<br><br><u>Financial Statement</u>             | Partners       |
| 4           | Sec.3<br>Para 2B<br>301       | Statement of Income for 57 & 58                                                                        | Partners       |
| 5           | Sec. 5<br>Para 1<br>301       | James H. Ranger                                                                                        | Partner        |



| Broadcast Application                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | FEDERAL COMMUNICATIONS COMMISSION          | Section II |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------|
| LEGAL QUALIFICATIONS<br>OF BROADCAST APPLICANT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Name of Applicant<br><b>RADIO CARRILLO</b> |            |
| INSTRUCTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                            |            |
| <p>As used in paragraphs 6 to 10 and 19 to 21, both inclusive, of Section II of this form, the words "party to this application" have the following meanings, respectively: In case of an <i>individual applicant</i>, the applicant. In case of a <i>partnership applicant</i>, all partners, including limited and silent partners. In case of a <i>corporate applicant</i>, all officers, directors, stockholders of record, persons owning the beneficial interest in any stock, subscribers to any stock, and persons who voted any of the voting stock at the last stockholders meeting. In case of any other applicant, all executive officers, members of the governing board, and owners or subscribers to any membership or ownership interest in the applicant. In case of an application for assignment or transfer, Section II should be completed only for the assignee or transferee, showing the ownership as it will be after the assignment or transfer has taken place. (Note: If the applicant considers that to furnish a complete answer to the paragraphs referred to would be an unreasonable burden, it may request the Commission for a waiver of the strict terms of this requirement.)</p>                                                                                                                                                                                                                                                                                                                                       |                                            |            |
| <p>1. Applicant is (Check one): An individual <input type="checkbox"/>, a general partnership <input checked="" type="checkbox"/>, a limited partnership <input type="checkbox"/>, a corporation <input type="checkbox"/>, an unincorporated association <input type="checkbox"/></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                            |            |
| <p>2. If applicant is not an individual, give the State, District, Territory or Possession under the laws of which it is organized.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                            |            |
| <p>3. Submit as Exhibit No. <u>L</u> copies, one of which must be properly certified, of (a) if applicant is a general or limited partnership, the partnership agreement; (b) if applicant is a corporation, the articles of incorporation (or charter) and the by-laws, certified by the Secretary of State or other appropriate official; (c) if applicant is an unincorporated association, the articles of association or other legal instrument under which applicant is organized showing the purpose thereof, and the bylaws, if any. In each case, submit properly certified copies of all amendments.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                            |            |
| <p>4. If applicant is a corporation or an unincorporated association, indicate specifically by reference to page and paragraph of the articles of incorporation or of association, the charter powers relied upon by the applicant to show that it is legally empowered to construct and operate the proposed station. If the articles of incorporation do not specifically authorize kind of business sought to be entered into, attach a statement from Secretary of State or other officer interpreting the language relied upon.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                            |            |
| <p>5. Complete Tables I and II on pages 3 and 4.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                            |            |
| CITIZENSHIP AND OTHER STATUTORY REQUIREMENTS (See instructions above)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                            |            |
| <p>6. If applicant is an individual, is the applicant a citizen of the United States; or, if applicant is not an individual, are all parties to this application citizens of the United States? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>If the answer is "No", state the name and citizenship of each person who is not a citizen of the United States.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                            |            |
| <p>7. Is United States citizenship of any party to this application claimed by reason of naturalization? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If so, state the name of such party, the date and place of issuance of final certificate of naturalization, certificate number, and name and location of court authorizing issuance of same.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                            |            |
| <p>8. Is United States citizenship of any party to this application claimed by reason of naturalization of a parent? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If so, state the name of such party, the name of the parent to whom the final certificate was issued, the age of the party to this application at the time the certificate was issued, and any additional facts relied on to establish citizenship, in addition to the information required by Paragraph 7 hereof.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                            |            |
| <p>9. (a) Is applicant or any party to this application a representative of an alien or of a foreign government? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>(b) If applicant is a corporation, is more than 20 percent of the capital stock owned of record or may it be voted by aliens or their representatives, or by a foreign government or a representative thereof, or by any corporation organized under the laws of a foreign country? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(c) If applicant is a corporation and is controlled by another corporation or corporations, is more than 25 percent of the capital stock of such controlling corporation or corporations owned of record or may it be voted by aliens, their representatives, or by any corporation organized under the laws of a foreign country? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(d) If the answer to any of the foregoing parts of this paragraph is "Yes", submit as Exhibit No. _____ a full disclosure concerning the persons and matters involved.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                |                                            |            |
| <p>10. (a) Has applicant or any party to this application had a station license revoked by order or decree of any Federal court? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>(b) Has the applicant or any party to this application been found guilty by a Federal court of the violation of the laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>(c) Has the applicant or any party to this application been finally adjudged guilty by a Federal court of unlawfully monopolizing or attempting unlawfully to monopolize radio communications, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means, or to have been using unfair methods of competition? (See Section 313 of the Communications Act of 1934) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>(d) Has the applicant or any party to this application been found guilty by any court of any felony or other crime involving moral turpitude, or of the violation of any State, territorial or local law relating to unlawful lotteries, restraints and monopolies and combinations, contracts or agreements in restraint of trade, or of using unfair methods of competition? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> |                                            |            |

| Broadcast Application                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | LEGAL QUALIFICATIONS  | Section II, Page 2                                                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|---------------------------------------------------------------------|
| 10. (Continued)                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                       |                                                                     |
| e. Is there now pending in any court or administrative body against the applicant or any party to this application any action involving any of the matters referred to in Paragraphs 10a, b, c, and d above?                                                                                                                                                                                                                                                                          |                       | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| f. Have voluntary proceedings in bankruptcy been instituted by, or have involuntary proceedings in bankruptcy ever been brought against applicant or any party to this application?                                                                                                                                                                                                                                                                                                   |                       | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| g. Are there outstanding any unsatisfied judgments or decrees against applicant or any party to this application?                                                                                                                                                                                                                                                                                                                                                                     |                       | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| h. If the answer to any of the foregoing parts of this paragraph is "Yes", submit as Exhibit No.      a full disclosure concerning the persons and matters involved, identifying the court and the proceeding (by dates and file numbers), stating the facts upon which the proceeding was based or the nature of the offense committed, and the disposition of the matter.                                                                                                           |                       |                                                                     |
| <b>CORPORATE APPLICANT</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                       |                                                                     |
| <b>INSTRUCTION:</b> If applicant is a corporation, answer paragraphs 11 to 16, inclusive.                                                                                                                                                                                                                                                                                                                                                                                             |                       |                                                                     |
| 11. Stock of corporation                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                       |                                                                     |
| (a) Class of stock                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | (b) Par value         | (c) Vote per share                                                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                       |                                                                     |
| (d) No. shares authorized                                                                                                                                                                                                                                                                                                                                                                                                                                                             | (e) No. shares issued | (f) No. shares subscribed                                           |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                       |                                                                     |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                       | (g) Total number stockholders                                       |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                       |                                                                     |
| 12. At the last meeting of stockholders were any shares of stock voted by proxy? <span style="float: right;">Yes <input type="checkbox"/> No <input type="checkbox"/></span>                                                                                                                                                                                                                                                                                                          |                       |                                                                     |
| If so, state                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                       |                                                                     |
| Class of stock                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | No. of shares         | Meeting date                                                        |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                       |                                                                     |
| No. voted by stockholders in person                                                                                                                                                                                                                                                                                                                                                                                                                                                   | No. voted by proxy    | Name of each proxy voting 1 percent more of each class              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                       |                                                                     |
| 13. In connection with the stockholders and stock subscribers named in Table I to this form, is the beneficial owner of the stock a person other than the owner of record or subscriber? <span style="float: right;">Yes <input type="checkbox"/> No <input type="checkbox"/></span>                                                                                                                                                                                                  |                       |                                                                     |
| If so, submit as Exhibit No.      a statement of (a) the name of the owner of record, or subscriber, (b) the name of the beneficial owner, (c) the conditions under which the owner or subscriber holds any votes or has subscribed for such stock, and (d) a copy of any contract or other instrument relating to such conditions.                                                                                                                                                   |                       |                                                                     |
| 14. Has applicant any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency? <span style="float: right;">Yes <input type="checkbox"/> No <input type="checkbox"/></span>                                                                                                                                                                                                                                       |                       |                                                                     |
| If so, submit as Exhibit No.      a statement of (a) the nature of such securities, (b) the face value or par value, (c) the number of units authorized, (d) the number of units issued and outstanding, (e) the number of units, if any, proposed to be issued, (f) the conditions or contingency upon which such securities may be voted, and (g) facts showing whether or not such securities have been voted or entitled to be voted in the past 5 years and at the present time. |                       |                                                                     |
| 15a. Is applicant corporation, directly or indirectly, controlled by another corporation or legal entity? <span style="float: right;">Yes <input type="checkbox"/> No <input type="checkbox"/></span>                                                                                                                                                                                                                                                                                 |                       |                                                                     |
| b. Is 10 percent or more of the stock of applicant corporation owned by another corporation or legal entity? <span style="float: right;">Yes <input type="checkbox"/> No <input type="checkbox"/></span>                                                                                                                                                                                                                                                                              |                       |                                                                     |
| c. If the answer to any of the foregoing parts of this paragraph is "Yes", state below the name of such other corporation or legal entity, and submit as Exhibit No.      (a) a statement of how such control, if any, exists and the extent thereof, and (b) with respect to such other corporation or legal entity, a statement answering paragraphs 11 to 15, inclusive and the information requested in Tables I and II of this section.                                          |                       |                                                                     |
| 16. Is the corporation or legal entity named in paragraph 15 in turn a subsidiary? <span style="float: right;">Yes <input type="checkbox"/> No <input type="checkbox"/></span>                                                                                                                                                                                                                                                                                                        |                       |                                                                     |
| If so, state below the name of such other parent corporation or legal entity, and submit as Exhibit No.      a statement for each such corporation or legal entity answering paragraphs 11 to 16, and the information requested in Tables I and II of this section, to and including the organization having final control.                                                                                                                                                           |                       |                                                                     |
| <b>UNINCORPORATED ASSOCIATION (OR OTHER LEGAL ENTITY)</b>                                                                                                                                                                                                                                                                                                                                                                                                                             |                       |                                                                     |
| <b>INSTRUCTION:</b> If applicant is an unincorporated association or a legal entity other than an individual, partnership or corporation, answer paragraphs 17 and 18.                                                                                                                                                                                                                                                                                                                |                       |                                                                     |
| 17. State the nature of the applicant, cite the laws under which organized, and submit as Exhibit No.      a copy of such laws.                                                                                                                                                                                                                                                                                                                                                       |                       |                                                                     |
| 18. State the total number of members or persons holding any ownership interest in the applicant.                                                                                                                                                                                                                                                                                                                                                                                     |                       |                                                                     |



Table I

INSTRUCTIONS: If applicant is an individual, fill out columns (a) and (b) stating (a) applicant's name and residence (home) address or addresses, and (b) applicant's date and place of birth. If applicant is a partnership, fill out columns (a), (b), (c) and (g), stating as to each general or limited partner (including silent partners): (a) name and residence (home) address or addresses, (b) date and place of birth, (c) nature of partnership interest (i.e. general or limited), and (d) percent of ownership interest. If applicant is a corporation or an unincorporated association, fill out all columns, giving the information requested as to all officers, directors and members of the governing board. In addition, give the information as to all stockholders, stock subscribers, holders of membership certificates of other ownership interests, unless the applicant has more than 20 stockholders, stock subscribers or holders of membership certificates or other ownership interests, in which case furnish the information as to all persons owning 3 percent or more of the capital stock, membership or ownership interest, and all persons who voted 3 percent or more of such stock or interest at the last meeting of stockholders, members or owners. If applicant is a corporation or unincorporated association, state in columns (d) the percent of voting stock or voting interest held, (d) whether or not the individual is a director or member of the governing board (Yes or No), (e) the number of shares of stock of all classes or membership interests held, and (f) the number of shares of stock of all classes or membership interests subscribed for.

| NAME AND RESIDENCE (home) ADDRESS(es)<br>(a) | DATE AND PLACE OF BIRTH<br>(b)              | NATURE OF PARTNERSHIP<br>INTEREST OR<br>OFFICE HELD<br>(c) | DIRECTOR OR MEMBER<br>OF GOVERNING BOARD<br>(Yes or No)<br>(d) | NO. SHARES OF EACH<br>CLASS OF STOCK<br>OR NO. MEMBERSHIP<br>OR OWNERSHIP INTERESTS |                   | PERCENT OF OWNERSHIP<br>OF PARTNERSHIP<br>OR PERCENT OF VOTING<br>STOCK OR MEMBERSHIP<br>(g) |
|----------------------------------------------|---------------------------------------------|------------------------------------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------------------------|-------------------|----------------------------------------------------------------------------------------------|
|                                              |                                             |                                                            |                                                                | Now held<br>(e)                                                                     | Subscribed<br>(f) |                                                                                              |
| James H. Ranger<br>716 Mariposa Way          | June 9, 1919<br>Litch Field<br>Minnesota    | 1/3 Partner                                                |                                                                |                                                                                     |                   | one<br>third                                                                                 |
| Ed John Zuchelli                             | Sept. 13, 1924<br>Los Angeles<br>California | 1/3 Partner                                                |                                                                |                                                                                     |                   | one<br>third                                                                                 |
| William Robert Sinclair                      | Jan. 8, 1928<br>Henry County<br>Indiana     | 1/3 Partner                                                |                                                                |                                                                                     |                   | one<br>third                                                                                 |



## LEGAL QUALIFICATIONS

Broadcast Application

Table II

## BUSINESS AND FINANCIAL INTERESTS

INSTRUCTIONS: The purpose of Table II is to obtain information concerning the occupation, business, and financial interests, at the present time and during the past 5 years, of the applicant and of each party to this application named in Table I. In column (a) list the names of all individuals or organizations listed in column (a) of Table I. In column (b) state the principal occupations and businesses in which each party named is engaged at the present time or has been engaged at any time during the past 5 years, and, in addition, state any other business or financial enterprise in which such party has now or within the past 5 years has had either a 25% or greater interest or any official relationship. In each case, state in column (b) the firm name, the principal place of business, and the nature of the business engaged in. In case the party has been associated in business with any other person or persons, state the name of each such other person. In column (c) state the extent and nature of the interest, official relationship, employment, or association, giving approximate dates.

| (a) Name of party       | (b) Firm name, principal place of business, and nature of business                                                  | (c) Extent and nature of interest, etc. (giving dates)                          |
|-------------------------|---------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| James H. Ranger         | 1954-1955<br>KWG Radio Stockton Calif. Comm. Radio                                                                  | Manager                                                                         |
|                         | 1955 to Present<br>Arenze Broadcasters, Santa Maria Comm.<br>Inc. (KCOY) Calif. Radio                               | Co-Owner and President<br>427½ consisting of<br>1235 shares of 297½<br>issued   |
| P.D John Zuchelli       | 1954-1955<br>KXOB Stockton, Calif. Comm.<br>Radio                                                                   | Sportscaster                                                                    |
|                         | 1955-Present<br>Arenze Broadcasters, Santa Maria Comm.<br>Inc. (KCOY) California Radio                              | Co-owner and Vice-President 427½<br>consisting of 1235<br>shares of 297½ issued |
| William Robert Sinclair | 1954 to 1956 U. S. Navy<br>1956 to Present<br>Arenze Broadcasters Santa Maria Comm.<br>Inc. (KCOY) California Radio | Sales and Production employee<br>of KCOY                                        |



## OTHER BROADCAST INTERESTS (See instructions on page 1)

19. Does applicant or any party to this application have now, or has applicant or any such party had, any interest in, or connection with, the following:

(a) Any standard, FM, or television broadcast station?

Yes ☒ No ☐

(b) Any application pending before the Commission?

Yes ☐ No ☒

(c) Any application which has been denied by the Federal Communications Commission?

Yes ☐ No ☒

(d) Any broadcast station the license of which has been revoked?

Yes ☐ No ☒

If the answer to any of the foregoing parts of this paragraph is "Yes", show particulars in the table below:

| (1) Name of party having such interest         | (2) Nature of interest or connection (giving dates) | (3) Call letters of station or file number of application | (4) Location |
|------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------------|--------------|
| James H. Ranger Same as Sec.2<br>Para 4        | KCOY and<br>FM Mobile                               |                                                           |              |
| F. d John Zuchelli Same as Sec.2<br>Para 4     | Units KD-8013<br>& KD-8014 and                      |                                                           | SANTA        |
| William Robt. Sinclair Same as Sec.2<br>Para 4 | Base Station<br>KNJ-900                             |                                                           | MARIA        |
|                                                |                                                     |                                                           | CALIFORNIA   |

20. Is the applicant or any party to this application controlled, directly or indirectly, by any person who has any interest in or connection with any broadcast station or application of the type referred to in Paragraphs 19(a) to (d)? If so, submit as Exhibit No. giving full particulars.

Yes ☐ No ☐

21. (a) Are any of the parties to this application related to each other (as husband, wife, father, mother, brother, sister, son or daughter)?

Yes ☐ No ☐

(b) Does any member of the immediate family (i.e., husband, wife, father, mother, brother, sister, son or daughter) of any party to this application have any interest in or connection with any other broadcast station or pending application?

Yes ☐ No ☐

(c) If answer is "Yes" to either (a) or (b) above, state (a) names of the persons, (b) relationship, (c) nature and extent of such interest or connection, (d) name of applicant or call letters of station, (e) file number of application, and (f) location of station or proposed station involved.

## OWNERSHIP AND CONTROL OF STATION

22. The Commission is seeking in this paragraph information as to contracts and arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future ownership, control or operation of the station; the questions must be answered in the light of this instruction.

(a) Applicant's control over the station is to be by reason of: (Indicate by check mark)

Ownership ☐

Lease ☐

Other Authority ☒

(b) Name and address of the owner of the station (if other than the applicant)

P. O. BOX 166

SANTA MARIA, CALIFORNIA

(c) Will the applicant have and maintain absolute control of the station, its equipment, and operation, including complete supervision of the program to be broadcast? If "No", explain

X

(d) Are there any documents, instruments, contracts or understandings relating to ownership, management, use or control of the station or facilities, or any right or interest therein?

Yes ☐ No ☐

If so, attach as Exhibit No. copies of all such documents, instruments or contracts and state the substance of oral contracts or understandings.

Additional Information to be Submitted by Applicants for  
Noncommercial Educational Television Broadcast Stations

Name of Applicant

1. (a) Describe clearly and in detail the character of the applicant (a public or private educational institution; a state, county, municipality or other political subdivision; or a board of education, school board, school district or other department or unit of a state or of one of its political subdivisions.)

(b) If applicant is a private educational institution, submit as Exhibit No. \_\_\_\_\_ a certified copy of its articles of incorporation or other authority under which it was organized, together with by-laws and amendments.

(c) If applicant is a public educational institution, submit as Exhibit No. \_\_\_\_\_ a certified copy of the laws (and amendments thereof) under which it was created with an appropriate citation as to the source thereof.

(d) If the applicant is a political subdivision, or a board, department or unit thereof, submit as Exhibit No. \_\_\_\_\_ a certified copy of the laws (and amendments thereof) under which said subdivision, board, department or unit was created with an appropriate citation as to the source thereof.

2. State whether applicant is a nonprofit educational institution or organization. If an institution, whether it is accredited, and by what authority.

3. If applicant is a state or a political subdivision thereof, does it have an independently constituted educational body, having autonomy in carrying out applicant's educational program? Yes ☐ No ☐

4. If applicant is a public or private educational institution, give details concerning the educational background of applicant's executive officers and members of its governing board.

5. (a) If the execution of this application was duly authorized by a governing body, give date and place of the meeting of said governing body.

(b) Submit as Exhibit No. \_\_\_\_\_ a certified copy of the resolution showing that: (i) a quorum of members having authority to act was present, (ii) the resolution was voted favorably by the members required, and (iii) the officer executing the application was authorized to do so.

6. (a) If applicant is a state or political subdivision thereof, or is a board, department or unit thereof, set forth fully and in detail all facts concerning the authority of the applicant to construct and operate a noncommercial educational television broadcast station and full information as to the sources of funds for the construction of such station, including whether such funds have been authorized, appropriated or how they will otherwise be made available.

(b) Submit as Exhibit No. \_\_\_\_\_ a certified copy of the statute, resolution or other authority (and amendments thereof) evidencing the above facts.



9.

| Broadcast Application                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                        | FEDERAL COMMUNICATIONS COMMISSION          |                                                                        | Section III                                     |                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|--------------------------------------------|------------------------------------------------------------------------|-------------------------------------------------|----------------------------------------|
| FINANCIAL QUALIFICATIONS<br>OF BROADCAST APPLICANT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                        | Name of Applicant<br><b>RADIO CABRILLO</b> |                                                                        |                                                 |                                        |
| The Commission is seeking in the questions that follow information as to contracts and arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future financing of the station; the questions must be answered in the light of this instruction.                                                                                                                                                                                                                                 |                                                                                        |                                            |                                                                        |                                                 |                                        |
| 1. a. Give estimated initial costs of making installation for which application is made. If performed under a contract for the completed work, the facts as to such contract must be stated in lieu of estimates as to the several items. In any event, the cost shown must be the costs in place and ready for service, including the amounts for labor, supervision, materials, supplies and freight. Cost items such as professional fees, mobile equipment, non-technical studio furnishings, etc. should be included under "Other Items" below. |                                                                                        |                                            |                                                                        |                                                 |                                        |
| Transmitter proper including tubes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Antenna system, including antenna-ground system, coupling equipment, transmission line | Frequency and modulation monitors          | Studio technical equipment, microphones, transcription equipment, etc. |                                                 |                                        |
| \$4,177.15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$3,335.20                                                                             | \$1,218.67                                 | \$2,764.24                                                             |                                                 |                                        |
| Acquiring land                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Acquiring, remodeling, or constructing buildings                                       | Other items itemize                        | Total                                                                  | Give estimated cost of operation for first year | Give estimated revenues for first year |
| \$4,000.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$5,000.00                                                                             | \$3,000.00                                 | \$23,495.26                                                            | \$42,000.00                                     | \$50,000.00                            |
| b. State the basis of the estimates in (a) above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                        |                                            |                                                                        |                                                 |                                        |
| Equipment estimate for Gates Radio - Land has already been acquired at Stated price and building is based on estimate of local builder.                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                        |                                            |                                                                        |                                                 |                                        |
| c. The proposed construction is to be financed and paid for in the following manner (including specified statements as to the approximate amount to be set and paid for from each source.) The financial plan should provide for any additional construction costs should the actual cost exceed the original estimated cost, and also for the early operation of the station in the event operating expenses should exceed operating revenues:                                                                                                      |                                                                                        |                                            |                                                                        |                                                 |                                        |
| Existing Capital                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | New Capital                                                                            | Loans from banks or others                 | Profits from existing operations                                       | Donations                                       | Credit, deferred payments, etc.        |
| None                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | \$24,000.00                                                                            | NONE                                       | NONE                                                                   | NONE                                            | NONE                                   |
| 2. a. Attach as Exhibit No. 3 a detailed balance sheet of applicant as at the close of a month within 90 days of the date of the application showing applicant's financial position. If the status and composition of any assets and liabilities on the balance sheet are not clearly defined by their respective titles, attach as Exhibit No. schedules which give a complete analysis of such items.                                                                                                                                              |                                                                                        |                                            |                                                                        |                                                 |                                        |
| b. Attach as Exhibit No. 4 a statement showing the yearly net income, after Federal income tax, for each of the past 2 years, received by applicant from the various types of activity in which he was engaged or from any other source.                                                                                                                                                                                                                                                                                                             |                                                                                        |                                            |                                                                        |                                                 |                                        |
| 3. Furnish the following information with respect to the applicant only. If the answer in "None" to any or all items, specifically so state:                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                        |                                            |                                                                        |                                                 |                                        |
| a. Amount of funds on deposit in bank or other depository                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                        |                                            | b. Name and address of the bank in which deposited                     |                                                 |                                        |
| NONE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                        |                                            |                                                                        |                                                 |                                        |
| c. Name and address of the party in whose name the money is deposited                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                        |                                            |                                                                        |                                                 |                                        |
| NONE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                        |                                            |                                                                        |                                                 |                                        |
| d. Conditions of deposit (in trust, savings, subject to check, on time deposit, who may draw on account and for what purpose, or other condition)                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                        |                                            |                                                                        |                                                 |                                        |
| NONE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                        |                                            |                                                                        |                                                 |                                        |
| e. Whether the funds were deposited for the specific purpose of constructing and operating the station                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                        |                                            |                                                                        |                                                 |                                        |
| NONE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                        |                                            |                                                                        |                                                 |                                        |



## FUNDS, PROPERTY, ETC., TO BE FURNISHED BY PARTIES CONNECTED WITH APPLICANT OR BY OTHERS

4. Submit as Exhibit No. \_\_\_\_\_ a statement setting forth the full name and address of each person (whether or not connected with applicant, but including partners, shareholders, or subscribers to capital stock of the applicant) who has furnished or will furnish funds, property, service, credit, loans, donations, assurances, or other things of value, or will assist in any other manner in financing station. For each person (other than financial institutions or equipment manufacturers) who has furnished or will furnish one percent or more of the total of things of value excluding loans from financial institutions and equipment credit supply the additional information requested in a to g below. For financial institutions or equipment manufacturers, supply the additional information requested in h below. ("Furnish" or "furnished" as herein used includes payments for capital stock or other securities, loans and other credits, gifts and any other contributions.)
- a. A description of that which has been or will be furnished by each person showing the value thereof and any encumbrances thereon.
  - b. If the funds or other things of value proposed to be used for the purchase or construction of the station have been acquired for that specific purpose, indicate the source or sources thereof.
  - c. For each person who has agreed to furnish funds, purchase stock or extend credit, submit a verified copy of the agreement by which each person is so obligated, showing the amount, terms of repayment, if any, and security, if any.
  - d. For each person (except financial institutions) who has agreed to furnish funds or purchase stock, but who has not already done so, submit a balance sheet or, in lieu thereof, a financial statement showing all liabilities and containing current and liquid assets sufficient in amount to meet current liabilities (including amounts payable during the next year on long term liabilities) and, in addition, to indicate financial ability to comply with the terms of the agreement. The balance sheets submitted should segregate receivables and payables to show the amounts due within one year and those due after one year. The term current and liquid assets refers to items such as cash, or loan value of insurance, government bonds, stocks listed on major exchanges etc., or other assets which may be readily used or converted to provide funds to meet the proposed commitments. Assets such as accounts receivable, which result from normal operation of a business, stocks of close corporations, timberland, building lots, etc., are not considered as a readily available source of funds without a specific showing that such assets will provide funds to meet proposed commitments. If a balance sheet does not clearly indicate liquid assets sufficient in amount to meet current liabilities and in addition, proposed commitments, it should be supplemented by a statement showing the manner in which non-liquid assets will provide such funds. Any financial statement furnished in lieu of a balance sheet should, likewise, describe assets relied on to provide funds, in sufficient detail to permit a determination of current position and should be more than a mere statement of total assets and total liabilities or a statement of net worth.
  - e. As to each person who has or has had in the past 5 years an interest of 25% or more in any business or financial enterprise or any official relationship to any business or financial enterprise, give full and complete disclosure of the enterprise, the name and principal place of business, the character of business engaged in, and the nature and extent of the interest in or relationship to such business.
  - f. Net income after Federal income tax, received for the past two years by each person who has furnished or will furnish funds, property, service, credit, loans, donations, assurances, or other things of value. (A statement that income for the required periods was in excess of a certain specified amount will be sufficient.)
  - g. If applicant or any person named in the exhibit has pledged, hypothecated or otherwise encumbered any stocks or other securities for the purpose of providing applicant with funds for construction of the station herein requested, submit a statement explaining each such transaction.
  - h. For financial institutions or equipment manufacturers who have agreed to make a loan or extend credit, submit a verified copy of the agreement by which the institution or manufacturer is so obligated, showing the amount of loan or credit, terms of payment, if any, and security, if any.



| Broadcast Application                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         | FEDERAL COMMUNICATIONS COMMISSION                                                                                                                                                                                                                                                                                                            |          | Section IV |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------|
| STATEMENT OF PROGRAM SERVICE<br>OF BROADCAST APPLICANT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |         | Name of applicant                                                                                                                                                                                                                                                                                                                            |          |            |
| NOTICE TO ALL APPLICANTS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |         |                                                                                                                                                                                                                                                                                                                                              |          |            |
| <p>The replies to the following questions constitute a representation of programming policy upon which the Commission will rely in considering the application. It is not expected that licensee will or can adhere inflexibly in day-to-day operation to the representation here made. However, since such representation will constitute, in part, the basis upon which the Commission acts on the application, time and care should be devoted to the preparation of the replies so that they will reflect accurately applicant's responsible judgment of his proposed programming policy.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |         |                                                                                                                                                                                                                                                                                                                                              |          |            |
| INSTRUCTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |         |                                                                                                                                                                                                                                                                                                                                              |          |            |
| <p>1. Paragraphs 1 to 4 are divided into a left-hand column which pertains to past operation and a right-hand column which pertains to proposed operation. Applicants for new stations or assignees or transferees of existing stations are to fill in only the right-hand column while applicants for authorizations for renewal of existing station licenses are to fill in both columns.</p> <p>2. Program data on past performance are to be based on the composite week for the year preceding the date of application except in the case of renewal applications where the year preceding the expiration date of the existing license is to be used. The days comprising the composite week of each year will be designated by public notice on or about November 15th of that year.</p> <p>3. Program classifications incident to the replies to Paragraphs 2, 3, and 4 below, are to be in accordance with the definitions on Page 4 of this Section.</p> <p>4. Assignees or transferees filing FCC Form 314 or 315 need not complete paragraphs 5 or 8.</p> |         |                                                                                                                                                                                                                                                                                                                                              |          |            |
| PAST OPERATION <b>NONE</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |         | PROPOSED OPERATION (for a typical week)                                                                                                                                                                                                                                                                                                      |          |            |
| <p>1. (a) State actual minimum weekly schedule of operation under the present authorization, giving opening and closing time and total hours for weekdays and Sunday.</p> <p style="text-align: center; padding-top: 20px;"><b>NONE</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |         | <p>(b) State minimum weekly schedule of operation proposed by licensee, permittee, assignee or transferee, giving opening and closing time and total hours for weekdays and Sunday.</p> <p style="text-align: center; padding-top: 20px;"><b>DAYTIME ONLY OPERATION</b></p>                                                                  |          |            |
| <p>2. (a) State for the composite week the percentage of time which was devoted to each of the following types of programs (totals to equal 100%).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |         | <p>(b) State the percentage of time to be devoted to each of the following types of programs for a proposed typical week of operation under the authorization requested (totals to equal 100%). Attach program schedule for this proposed typical week and indicate thereon the class of each program in accordance with paragraph 4(b).</p> |          |            |
| (1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | _____ % | (1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)                                                                                                                                                                        | 71.6 %   |            |
| (2) Religious (include here all sermons, religious news, music, and drama, etc.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | _____ % | (2) Religious (include here all sermons, religious news, music, and drama, etc.)                                                                                                                                                                                                                                                             | 2.2 %    |            |
| (3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | _____ % | (3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)                                                                                                                                                                                    | 3.9 %    |            |
| (4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | _____ % | (4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below)                                                                                                                                                                   | 1.1 %    |            |
| (5) News (include here news reports and commentaries)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | _____ % | (5) News (include here news reports and commentaries)                                                                                                                                                                                                                                                                                        | 18.7 %   |            |
| (6) Discussion (include here forum, panel and round-table programs)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | _____ % | (6) Discussion (include here forum, panel and round-table programs)                                                                                                                                                                                                                                                                          | 1.0 %    |            |
| (7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | _____ % | (7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)                                                                                                                                                                                                         | 1.4 %    |            |
| (8) _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | _____ % | (8) _____                                                                                                                                                                                                                                                                                                                                    | 100.00 % |            |
| (9) _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | _____ % | (9) _____                                                                                                                                                                                                                                                                                                                                    | _____ %  |            |
| (10) Miscellaneous                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | _____ % | (10) Miscellaneous                                                                                                                                                                                                                                                                                                                           | _____ %  |            |
| 100                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |         |                                                                                                                                                                                                                                                                                                                                              | 100      |            |



3. (a) Dividing the broadcast week into 15 minute periods, specify below the number of 14½ minute periods within such 15 minute periods during the composite week in which were broadcast (exclusive of non-commercial spot announcements, call letter announcements and promotional announcements for sustaining programs):

|                                                    | No. of 14½ minute periods |
|----------------------------------------------------|---------------------------|
| (1) No spot announcements or commercial continuity | _____                     |
| (2) One spot announcement                          | _____                     |
| (3) Two spot announcements                         | _____                     |
| (4) Three spot announcements                       | _____                     |
| (5) Four spot announcements                        | _____                     |
| (6) Five or more spot announcements                | _____                     |

Total number of 14½ minute periods \_\_\_\_\_

State the number of spot announcements (exclusive of non-commercial spot and call letter announcements, and promotional announcements for sustaining programs) broadcast during the composite week which exceeded one minute in length \_\_\_\_\_  
(See definition of spot announcement)

(b) State what the practice of the station will be with respect to the number and length of spot announcements allowed in a given period.

4. In the tables below the percentages for each segment are to be computed on the basis of 100 percent of the operating hours within the particular segment for the seven days comprising the composite week (i.e., if full time operation, 70 hours for the 8 a.m. to 6 p.m. segment, 35 hours for the 6 p.m. to 11 p.m. segment, and the total weekly hours of operation between 11 p.m., and 8 a.m. for the third segment). The percentages in the column headed "Total" are to be computed on the basis of 100 percent of operating hours for the seven days.

The exact number of spot announcements should be stated, including those broadcast within participating programs, but excluding call letter announcements (call letters and location) and promotional announcements for sustaining programs.

NOTE: The purpose of the following tabulation is to enable the Commission to secure quantitative data as to the proportion of time (to be) devoted to the various classes of programs. The function of each class of program as part of a diversified program structure is discussed in the Commission's Report of March 7, 1946, entitled "Public Service Responsibility of Broadcast Licensees".

(a) State the percentage of time which was devoted to each of the following classes of programs during the composite week.

|                                                                       | PROGRAM LOG ANALYSIS<br>(in percentages) |                    |                       |       |
|-----------------------------------------------------------------------|------------------------------------------|--------------------|-----------------------|-------|
|                                                                       | 8 a.m.-<br>6 p.m.                        | 6 p.m.-<br>11 p.m. | All<br>other<br>hours | Total |
| (1) Network commercial (NC)                                           | _____                                    | _____              | _____                 | _____ |
| (2) Network sustaining (NS)                                           | _____                                    | _____              | _____                 | _____ |
| (3) Recorded commercial (RC)                                          | _____                                    | _____              | _____                 | _____ |
| (4) Recorded sustaining (RS)                                          | _____                                    | _____              | _____                 | _____ |
| (5) Wire commercial (WC)                                              | _____                                    | _____              | _____                 | _____ |
| (6) Wire sustaining (WS)                                              | _____                                    | _____              | _____                 | _____ |
| (7) Live commercial (LC)                                              | _____                                    | _____              | _____                 | _____ |
| (8) Live sustaining (LS)                                              | _____                                    | _____              | _____                 | _____ |
| (9) Total commercial<br>(1+3+5+7)                                     | =====                                    | =====              | =====                 | ===== |
| (10) Total sustaining<br>(2+4+6+8)                                    | =====                                    | =====              | =====                 | ===== |
| (11) Complete Total                                                   | 100%                                     | 100%               | 100%                  | 100%  |
| (12) Actual broadcast hours<br>(per week)                             | _____                                    | _____              | _____                 | _____ |
| (13) No. of spot announce-<br>ments (SA) (per week)                   | _____                                    | _____              | _____                 | _____ |
| (14) No. of non-commercial<br>spot announcements (NCSA)<br>(per week) | _____                                    | _____              | _____                 | _____ |

(b) Show in the table below the percentage of time proposed to be devoted to each of the following classes of programs during a proposed typical week of operation.

|                                                                       | PROGRAM LOG ANALYSIS<br>(in percentages) |                    |                       |       |
|-----------------------------------------------------------------------|------------------------------------------|--------------------|-----------------------|-------|
|                                                                       | 8 a.m.-<br>6 p.m.                        | 6 p.m.-<br>11 p.m. | All<br>other<br>hours | Total |
| daytime only 7am to 5pm                                               | _____                                    | _____              | _____                 | _____ |
| (1) Network commercial (NC)                                           | 0                                        | 0                  | —                     | —     |
| (2) Network sustaining (NS)                                           | 0                                        | 0                  | —                     | —     |
| (3) Recorded commercial (RC)                                          | 45.8                                     | —                  | —                     | 45.8  |
| (4) Recorded sustaining (RS)                                          | 28.4                                     | —                  | —                     | 28.4  |
| (5) Wire commercial (WC)                                              | 10.2                                     | —                  | —                     | 10.2  |
| (6) Wire sustaining (WS)                                              | 8.5                                      | —                  | —                     | 8.5   |
| (7) Live commercial (LC)                                              | 4.0                                      | —                  | —                     | 4.0   |
| (8) Live sustaining (LS)                                              | 3.1                                      | —                  | —                     | 3.1   |
| (9) Total commercial<br>(1+3+5+7)                                     | 60.0                                     | —                  | —                     | 60.0  |
| (10) Total sustaining<br>(2+4+6+8)                                    | 40.0                                     | —                  | —                     | 40.0  |
| (11) Complete Total                                                   | 100%                                     | 100%               | 100%                  | 100%  |
| (12) Proposed broadcast hours<br>(per week)                           | Daytime only<br>est. average day         |                    |                       |       |
| (13) No. of spot announce-<br>ments (SA) (per week)                   | 560                                      | 11 hrs.            | —                     | 560   |
| (14) No. of non-commercial<br>spot announcements (NCSA)<br>(per week) | 205                                      | —                  | —                     | 205   |



13

## Broadcast Application

## STATEMENT OF PROGRAM SERVICE

Section IV, Page 3

5. (a) Attach as Exhibit No. \_\_\_\_\_ the original or one exact copy of the program log for the seven days comprising the composite week analyzed in the preceding paragraphs. (If original logs are submitted they will be returned.)

(b) What year's composite week has been analyzed in the foregoing paragraphs?

6. Will the proposed station be affiliated with any network? Yes ☐ No ☒   
 If the answer is "Yes", give the name of the network.

7. Attach as Exhibit No. 6 a narrative statement on the policy to be pursued with respect to making time available for the discussion of public issues, including illustrations of the types of programs to be broadcast and the methods of selection of subjects and participants.

8. If this application is for an FM authorization, will the programs of any AM station operating in the same area be duplicated? If the answer is yes, Yes ☐ No ☒

(a) How many hours per day will be devoted to duplicated programs?

(b) Call letters and location of the AM station  
UNKNOWN - ATASCADERO, CALIF.

(c) What kinds of programs (musical, sports, etc.) will be duplicated?

NONE

9. State the average number of hours per week which will be used in advertising or promoting any business, profession or activity other than broadcasting in which the applicant is engaged or financially interested either directly or indirectly. If this is an application for renewal of license, show this data for the past license period also.

NONE

10. If the data furnished in response to the questions in this Section IV do not in the applicant's opinion adequately reflect station operation, attach as Exhibit No. \_\_\_\_\_ a statement setting forth any additional program data that the applicant desires to call to the Commission's attention. (If the applicant feels that the program material classified in Paragraph 2 is susceptible of classifications other than those listed he may supplement Paragraph 2 with an explanatory statement in this Exhibit.)

11. If this application is for a television authorization, will programs be broadcast in color? Yes ☐ No ☐   
 If "Yes", will programs be: Network ☐ Local Live ☐ Local Slide ☐

12. State applicant's general plans for staffing the station, including the number of employees in each department (i.e. program, commercial, technical, etc.), and the names, residence and citizenship of the general manager, station manager, program director and other department heads who have been employed or whom the applicant expects to employ.

1 Manager-Sales William Robert Sinclair  
1 Program Director-Sales  
1 Office Manager-Traffic  
2 Announcers-Engineers  
1 Part time announcer-Engineer



## PROGRAM CLASSIFICATION

14-  
A commercial program (C) is any program the time for which is paid for by a sponsor or any program which is interrupted by a spot announcement (as defined below), at intervals of less than 14 1/2 minutes. A network program shall be classified as "commercial" if it is commercially sponsored on the network, even though the particular station is not paid for carrying it--unless all commercial announcements have been deleted from the program by the station. Cooperative programs furnished to its affiliates by a network which are available for local sponsorship are network sustaining programs (NS) if no local sponsorship is involved and are network commercial programs (NC) where there is local sponsorship even though the commercial announcement is made by the station's local announcer.

(It will be noted that any 14 1/2 minute segment of a program which is interrupted by a commercial announcement is classified as a commercial program, even though the purchaser of the interrupting announcement has not also purchased the time preceding and following. The result is to classify so called "participating" programs as commercial. Without such a rule, a 15-minute program may contain 5 or even more minutes of advertising and still be classified as "sustaining". Under the proposed definition, a program may be classified as "sustaining" although preceded and followed by spot announcements, but if a spot announcement interrupts a program, the 14 1/2 minute segment so interrupted must be classified as "commercial.")

A sustaining program (S) is any program which is neither paid for by a sponsor nor interrupted by a spot announcement (as defined below.)

A network program (N) is any program furnished to the station by a network or another station. Delayed broadcasts of transcribed programs or films, originated by networks are classified as "network" not "recorded." Cooperative programs furnished to its affiliates by a network which are available for local sponsorship are network sustaining programs (NS) if no local sponsorship is involved and are network commercial programs (NC) where there is local sponsorship even though the commercial announcement is made by the station's local announcer. Programs are classified as network whether furnished by a nationwide, regional, or special network or by another station.

A recorded program (R) is any program which uses phonograph records, electrical transcriptions, films, or other means of mechanical reproduction in whole or in part--except where the recording is wholly incidental to the program and is limited to background sounds, sound effects, identifying themes, musical "bridges", etc. A program part transcribed or recorded and part live is classified as "recorded" unless the recordings are wholly incidental, as above. A transcribed delayed broadcast of a network program, however, is not classified as "recorded" but as "network." A recorded or filmed program which is a local live program produced by the station and recorded for later broadcasting by the station shall be considered a local live program.

A wire program (W) is any program the text of which is distributed to a number of stations by telegraph, teletype, or similar means, and read in whole or in part by a local announcer. Programs distributed by the wire news services are "wire" programs. A news program which is part wire and in part of non-syndicated origin is classified as "wire" if more than half of the program is usually devoted to the reading verbatim, or virtually verbatim, of the syndicated wire text, and otherwise is classified as "live."

A local live program (L) is any local program which uses live talent exclusively, whether originating in the station's studios or by remote control. Programs furnished to a station by a network or another station, however, are not classified as "live" but as "network". A program which uses recordings in whole or in part, except in a wholly incidental manner, should not be classified as "live" but as "recorded." Wire programs, as defined above, should likewise not be classified as "live". A recorded program which is a local live program produced by the station and recorded for later broadcasting by the station shall be considered a local live program.

A non-commercial spot announcement (NCSA) is an announcement which is not paid for by a sponsor and which is devoted to a non-profit cause--e.g., war bonds, Red Cross, public health, civic announcements, etc. Promotional announcements should be classified as "non-commercial spot announcements" if the program promoted is a sustaining program; other promotional announcements should be classified as "spot announcements". Participating announcements should not be classified as "non-commercial spot announcements" but as "spot announcements." War bond, Red Cross, civic and similar announcements for which the station receives remuneration should not be classified as "non-commercial spot announcements" but as "spot announcements."

A spot announcement (SA) is any announcement which is neither a non-commercial spot announcement (as above defined) nor a station identification announcement (call letters and location). An announcement should be classified as a "spot announcement," whether or not the station receives remuneration, unless it is devoted to a nonprofit cause. Sponsored time signals, sponsored weather announcements, etc. are spot announcements. Unsponsored time signals, weather announcements, etc., are program matter and not classified as announcements. Station identification announcements should not be classified as either non-commercial spot announcements or spot announcements, if limited to call letters, location and identification of the licensee and network. Commercial continuity on sponsored programs is not classified as spot announcements.

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APPENDIX D

Public Notice of the Federal  
Communications Commission  
Dated May 14, 1959-PAGE 3

May 14, 1959

## BROADCAST APPLICATIONS ACCEPTED AND TENDERED FOR FILING

STANDARD BROADCAST APPLICATIONS RETURNED: (Dated Wrong)

Mac M. Thomas and Ruby Jo  
Clotfelter d/b as Cherokee  
County Radio Station  
Centre, Alabama  
(PO - c/o Ruby Jo Clotfelter,  
1145 Walnut Street, Gadsden, Ala.)

NEW

Construction permit for a new  
standard broadcast station to be  
operated on 990 kilocycles, with  
power of 250 watts and daytime  
hours of operation.

James H. Ranger, William R.  
Sinclair and Ed J. Zuchelli  
d/b as Radio Cabrillo  
Atascadero, California

NEW

Construction permit for a new  
standard broadcast station to be  
operated on 1480 kilocycles, with  
power of 500 watts and daytime  
hours of operation.

John I. Groom and James  
Hagerman, A Co-Partnership  
Santa Maria, California

KSMA

Authority to determine operating  
power by direct measurement of  
antenna power. (1240kc)

APPLICATIONS FOR STANDARD BROADCAST FACILITIES TENDERED FOR FILING:

Farley W. Warner, Charles R.  
Rudolph, Mary Cobb and Richard S.  
Cobb d/b as Birmingham  
Broadcasting Co.  
Birmingham, Alabama  
(PO - 3855 30th Street, North,  
Arlington, Virginia)

NEW

Construction permit for a new  
standard broadcast station to be  
operated on 1550 kilocycles, with  
power of 50 kilowatts, daytime  
hours of operation and employing  
directional antenna.

Jess M. Swicegood tr/as  
Houston Broadcasters  
Dothan, Alabama

WDIG

Construction permit to increase  
daytime power from 250 watts to  
1 kilowatt and make changes in  
transmitting equipment. (1450kc)

Valley Radio Corp.  
Bakersfield, California

KIKK

Voluntary transfer of control of  
licensee corporation from Dawkins  
Espy to Joseph M. Arnoff. (800kc)

Sioux Broadcasting Corporation NEW  
Coral Gables, Florida  
(PO - c/o Robert A. Peterson,  
Miami Beach First National Bank  
Building, Miami Beach, Florida)

NEW

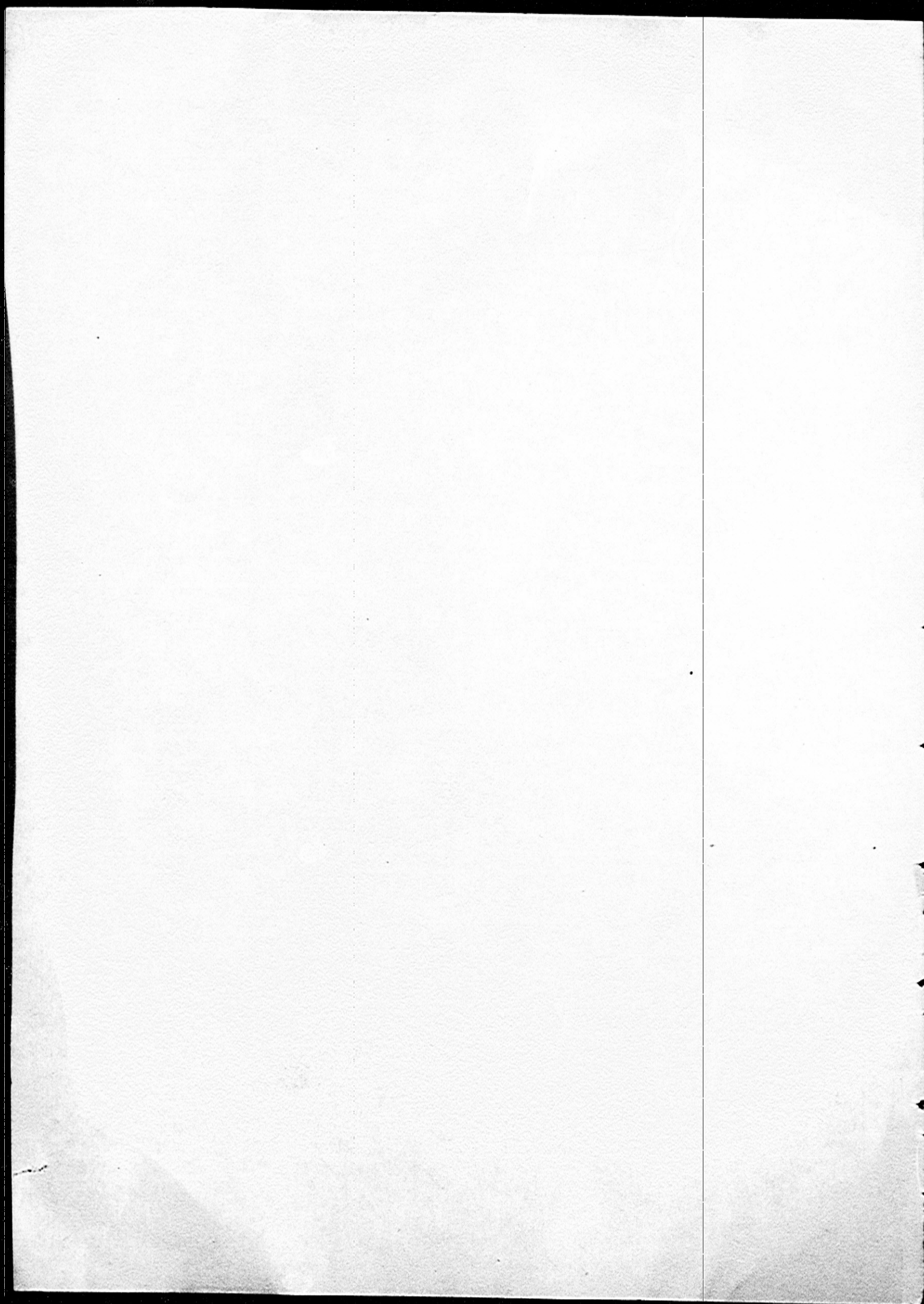
Construction permit for a new  
standard broadcast station to be  
operated on 1550 kilocycles, with  
power of 10 kilowatts, daytime  
hours of operation and employing  
directional antenna.

WJBS, Inc.  
DeLand, Florida

WJBS

Construction permit to increase  
daytime power from 250 watts to  
1 kilowatt and install new  
transmitter. (1490kc)

(OVER)





BRIEF FOR INTERVENORS

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,714

JAMES H. RANGER,  
WILLIAM R. SINCLAIR

and

ED. J. ZUCHELLI  
d/b/a RADIO CABRILLO,

Appellants,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee,

EDWARD E. URNER

and

BRYAN J. COLEMAN,  
d/b/a CAL-COAST BROADCASTERS,

Intervenors.

Appeal from the  
Federal Communications Commission

Of Counsel:  
Haley, Wollenberg & Bader

January 19, 1961

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United States Court of Appeals  
For the  
District of Columbia Circuit  
FILED  
JAN 19 1961  
Joseph W. Stewart  
CLERK



10-14-50

10-14-50

(i)

### QUESTIONS PRESENTED<sup>\*</sup>

1. Whether the Commission's action of May 7, 1959, returning appellants' application for a new standard broadcast station, its action of December 22, 1959, dismissing appellants' resubmitted application as untimely filed, and its action of April 4, 1960, denying appellants' "Petition for Reconsideration and Reinstatement," were arbitrary, capricious and contrary to the public interest in that:

a. the return of appellants' application as not substantially complete was improper;

b. the delay in returning appellants' application was unreasonable and deprived appellants of an opportunity to refile their application in a timely manner and to obtain a comparative hearing with the application of intervenors;

c. the return of appellants' application was effected without complying with the notice and opportunity to reply provisions of Section 309(b) of the Communications Act of 1934, as amended.

2. Whether Sections 1.106(b)(1) and 1.361(b) of the Commission's Rules, under which appellants' resubmitted application was dismissed, are invalid in that they were adopted in a manner contrary to Sections 4(a) and 4(b) of the Administrative Procedure Act.

Counsel for appellants believes that the following question is also presented:

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<sup>\*</sup> Agreed to by stipulation dated July 19, 1960, approved in Preliminary Order dated July 21, 1960.



(ii)

3. Whether Sections 1.106(b)(4) and 1.361(b) are arbitrary and capricious and contrary to the public interest in that they have no reasonable relationship to the protection of the Commission's orderly administrative process, and deprived appellants of their right to a comparative hearing.

Counsel for appellee and intervenors are of the view that question No. 3 is not properly presented since the question is not within the scope of the appellants' Notice of Appeal.

(iii)

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\* Authorities marked with asterisks are those upon which particular reliance is placed.



UNITED STATES COURT OF APPEALS  
For The District Of Columbia Circuit

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No. 15,714

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JAMES H. RANGER,  
WILLIAM R. SINCLAIR

and

ED J. ZUCHELLI  
d/b/a RADIO CABRILLO,

*Appellants,*

v.

FEDERAL COMMUNICATIONS COMMISSION,

*Appellee,*

EDWARD E. URNER

and

BRYAN J. COLEMAN,  
d/b/a CAL-COAST BROADCASTERS,

*Intervenors.*

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Appeal from the  
Federal Communications Commission

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**BRIEF FOR INTERVENORS**

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## COUNTERSTATEMENT OF THE CASE

The statement contained in appellants' brief is incomplete in various critical respects.<sup>1</sup> A more complete statement is required to place the factual situation involved in proper perspective.

### *A. Nature of the Commission Proceedings Involved.*

Appellants seek review of orders of the Federal Communications Commission (R. 1, 113) involving the dismissal, as untimely filed, of their application for a new standard broadcast station at Atascadero, California. Intervenor applied for a standard broadcast station at Santa Maria, California, and their application therefor was pending as of the dates of the Commission orders under review (R. 114). Had appellants timely filed a proper application, such application would have been mutually exclusive with that of intervenors, and appellants' application would have been entitled to comparative consideration with that of intervenors.<sup>2</sup>

### *B. The Facts.*

Appellants first tendered for filing a purported application on April 20, 1959 (R. 1; see Appellants' Br., Appendix C). At the time of the tender, there were two conflicting applications pending:

---

<sup>1</sup> Inter alia, appellants omit the list of defects which led the Commission initially to return their purported application as incomplete.

<sup>2</sup> Subsequently, intervenors' application was granted (November 2, 1960, FCC Docket 13331). A petition for reconsideration filed by appellants is presently pending before the Commission. Another petition for reconsideration, filed by licensees of two existing stations in Santa Maria (KSMA and KCOY), is also pending. The licensee of station KCOY is Arenze Broadcasters, which is owned by appellants Ranger and Zuchelli (see Appellants' Br., Appendix C, Sect. II, p. 4). The proceedings on intervenors' application are not before the Court on this appeal.

(1) Jeannette B. Arment, tr/as Radio Atascadero for Atascadero, California (FCC File No. BP-12068) filed June 9, 1958.

(2) Intervenors' application for Santa Maria, California, filed November 26, 1958 (FCC File No. BP-12613).

By letter dated May 7, 1959 and mailed May 11, 1959, the Commission returned appellants' application as unacceptable for filing (R. 1-2). The letter read as follows:

Gentlemen:

Returned herewith is the application for construction permit to erect a new standard broadcast station at Atascadero, California. Upon examination we find it is not acceptable for Commission consideration in its present form.

The application is dated and verified as of April 7, 1959, whereas the financial statement of William R. Sinclair has been signed and verified on April 10, 1959. All sections and exhibits must be dated the same date as, or prior to, the date and verification of Section I.

Section I has not been executed according to instructions in Paragraph D of the application form. The names of the partners must appear as shown in the partnership agreement. Also, the partnership agreement is not dated.

In Section II, Table I, column (a), you failed to give home street addresses for all partners. Too, you failed to answer Paragraph 20 and 21 of Section II. All pertinent parts of the application must be answered.

It is requested that a personal Balance Sheet be submitted for Ed.J. Zuchelli. Also, the net income for the past two years be submitted for Wm. R. Sinclair.

Your application fails to disclose the schedule of programs of the typical week of your proposed operation. Paragraph 2(b), Section IV, specifically requests that such a schedule be submitted and that there be indicated thereon



the class of each program in accordance with the Program Classification stated on Page 4 of this section. Three copies are necessary.

It is noted that no Exhibit "2", as listed in Section I, page 2, regarding option on land, was received with the application. Instruction C, Section I, requires that all Exhibits be properly numbered.

In accordance with Instruction B, of Section I, it is necessary to file only three copies of the application (two additional copies of Section V-G and Exhibits).

When resubmitting the application, Section I should be sworn to by one of the partners as of a current date. Forms are enclosed for your convenience in refiling.

Very truly yours,

Mary Jane Morris  
Secretary

On and after May 16, 1960, pursuant to Section 1.106(b)(1) of the Commission's Rules and Regulations (Appellants' Br., Appendix A, pp. 3-4) and a public notice issued on April 8, 1959 (FCC 59-315), later-filed applications conflicting with those of intervenors and Radio Atascadero became ineligible for comparative consideration with those applications. Appellants nevertheless tendered for filing a corrected application on May 22, 1959 (R. 3).

On December 22, 1959, the Commission dismissed appellants' application by letter which read as follows (R. 72):

Gentlemen:

Reference is made to your application for a construction permit for a new standard broadcast station at Atascadero, California, File No. BP-13205, requesting operation on 1480 kilocycles, with a power of 500 watts, daytime only.

By Commission letter dated May 7, 1959, your application was returned pursuant to the provisions of Section 1.306 of the Commission's Rules, as not acceptable for filing because of the various deficiencies found in the application. These deficiencies were enumerated in the above said letter.

An application for a new standard broadcast station on 1490 kilocycles in Atascadero, California, was filed by Radio Atascadero on June 9, 1958 and was assigned File No. BP-12068. On April 8, 1959, the Commission gave notice, which was published in the Federal Register, that BP-12068, among other applications, would be considered ready and available for processing on May 16, 1959. Your above-referenced application was resubmitted on May 22, 1959.

Your attention is directed to Section 1.106(b)(4) of the Commission Rules which provides that "any mutually exclusive application filed after the close of business on the day preceding the day designated by Public Notice published in the Federal Register as the day any one of the previously filed applications is available and ready for processing, will be dismissed without prejudice and will be eligible for refiling only after a final decision is rendered by the Commission with respect to the prior application or applications or after such application or applications are dismissed or removed from the hearing docket."

In view of the foregoing, your application was not timely filed to be considered with BP-12068 and, therefore, pursuant to Section 1.106(b)(4) of the Commission Rules, your application is hereby dismissed.

BY DIRECTION OF THE COMMISSION

Mary Jane Morris  
Secretary

Appellants petitioned for reconsideration of this order (R. 74, 93, 105) and intervenors opposed the petition (R. 97, 109). On April 4, 1960, the Commission issued its memorandum opinion and order denying the petition (R. 113).

The five Commissioners who participated in the decision unanimously concluded that the purported application tendered by appellants on April 20, 1959 had been properly rejected and returned as unacceptable for filing, and that no equitable or other reason had been established as a basis for according to appellants' late-filed application of May 22, 1959 a nunc pro tunc status as of an earlier date in derogation of the processing rules (R. 115-118).

Appellants filed a notice of appeal on May 4, 1960, seeking review of the Commission's Memorandum Opinion and Order of April 4, 1960 denying reconsideration of the dismissal order of December 22, 1959, and of the dismissal order itself. Intervenors filed a timely notice of intervention on May 31, 1960.

## SUMMARY OF ARGUMENT

### I

The Commission properly returned as unacceptable for filing appellants' abortive application tendered on April 20, 1959. Section 1.306(a) of the Commission's Rules validly provides for return of applications not substantially complete when tendered. The notice as to deficiencies in applications required by former Section 309(b) of the Communications Act applied only with respect to valid applications filed in accordance with Section 308(b) of the Act and the requirements prescribed by the Commission pursuant thereto.

The "application" tendered by appellants on April 20, 1959 was not a valid application under the above test. It was incomplete in a number of major and minor respects and was, therefore, properly returned.



## II

Appellants' late-filed application tendered on May 22, 1959 was not entitled to comparative consideration with the timely-filed application of intervenors. Appellants' application was properly dismissed pursuant to Section 1.106(b)(4) of the Commission's Rules. This cut-off rule validly excludes from consideration applications filed after dates prescribed by the Commission. No legal basis has been shown for appellants' asserted right to have the May 22, 1959 application given nunc pro tunc status as of the date of tendering the earlier abortive application. No legal or equitable basis has been established for a waiver of the applicable Commission rules, and no abuse of discretion has been shown.

## ARGUMENT

## I

APPELLANTS' PURPORTED APPLICATION TENDERED  
ON APRIL 20, 1959 WAS PROPERLY RETURNED BY  
THE COMMISSION AS UNACCEPTABLE FOR FILING

A. *Section 1.306(a) of the Commission's Rules Validly Provides  
For Return of Applications Which Are Not Substantially  
Complete.*

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Section 1.306(a) of the Commission's Rules and Regulations  
provides as follows:

Applications which are tendered for filing in Washington, D.C. are dated by the Office of the Secretary upon receipt and then forwarded to the Broadcast Bureau where an administrative examination is made to ascertain whether the applications are complete. Applications found to be complete or substantially complete are accepted for filing

and are given a file number. In case of minor defects as to completeness, the applicant will be requested to supply the missing information. Applications which are not substantially complete will be returned to the applicant.

It is not clear whether appellants are contending that the above rule is wholly invalid or merely that it is invalid as applied here (Appellants' Br. 8-12). In any event, however, appellants argue that, where certain "jurisdictional" information contemplated by Section 308(b) of the Communications Act is supplied, a failure to supply other material lawfully required by the Commission does not warrant a return of the application as defective (Appellants' Br. 10).

Appellants' argument rests upon an incorrect interpretation of Section 309 of the Communications Act as it existed at the pertinent dates in this case.<sup>3</sup> Section 309(a) provided for the grant without hearing of applications provided for in Section 308 if the Commission found that the public interest, convenience and necessity would be served thereby. Section 309(b) dealt with situations in which the Commission was unable initially to make the requisite public interest finding.

Where the Commission's examination of "such application," i.e., an application provided for in Section 308, left the Commission unable to make such a finding, Section 309(b) directed that the Commission

\* \* \* shall forthwith notify the applicant and other known parties in interest of the grounds and reasons for its inability to make such finding.

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<sup>3</sup> Section 309 has now been amended by Public Law 86-752 to delete the notification requirement upon which appellants rely, but the new law is inapplicable to the case at bar.



Appellants apparently argue that when an incomplete application is submitted, the Commission could not lawfully return the abortive application as unacceptable for filing, as provided in Section 1.306(a) of the Commission's Rules (supra). The Commission was required, say appellants, to retain the application and follow the Section 309(b) procedure, including presumably the holding of a full hearing on the application as finally amended, even if it were patently incomplete.

The difficulty with appellants' argument is that it misconceives the nature of an "application" within the meaning of Section 309. The "application" referred to in Section 309 is not merely an expression of a desire to receive a broadcast authorization, couched in such terms as the person seeking the authorization may choose. To qualify under Section 309, a purported application must meet the statutory standards of Section 308(b) of the Act, 47 U.S.C. 308(b), and the valid requirements imposed by the Commission pursuant to that Section.

Section 308(b), 47 U.S.C. 308(b), provides as follows:

All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee under oath or affirmation.



Section 1.322 of the Commission's Rules prescribes, for applications of the type here involved, that FCC Form 301 shall be used. The requirements of that form are clear and explicit (Appellants' Br., Appendix C).

On the first page of Form 301, the following instruction is stated in capital letters, to assure that it will not be overlooked:

BE SURE ALL NECESSARY INFORMATION IS FURNISHED  
AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY  
PORTIONS OF THE APPLICATION ARE NOT APPLICABLE,  
SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE  
APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERA-  
TION.

Thereafter, throughout the Form, specific information is called for in unequivocal language. Appellants are compelled to argue in effect that they were free to disregard important parts of the prescribed form, yet were entitled to be treated as applicants. There is no basis for such a contention.

In sum, a request for broadcast facilities becomes an "application" within the meaning of Section 309(b) only when it satisfies the requirements lawfully imposed by the Commission pursuant to the explicit authority of Section 308(b) of the Communications Act. Section 1.306(a) of the Commission's Rules, which provides for return of "applications" not meeting these standards, is a lawful implementation of the Commission's authority. Like comparable Rule 14(b) of this Court,<sup>4</sup> Section 1.306(a) is an indispensable sanction to protect the Commission's processes from abuse by those who cannot or will not comply with the Rules.

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<sup>4</sup> "The clerk shall refuse to file any brief and joint appendix which has been printed otherwise than in substantial conformity with this Rule. The briefs and joint appendix so printed must be clear and legible and, in default of this requirement, shall be rejected for filing by the clerk."

***B. Appellants' Purported Application was Properly Returned  
By the Commission as Not Substantially Complete.***

Since it has been established in Point A, supra, that Section 1.306(a) represents a valid exercise of the Commission's rule making power, the question remains whether the rule was properly applied to bar consideration of appellants' purported application tendered for filing on April 20, 1959. In other words, the question is whether the document tendered by appellants was substantially complete.

It is significant that appellants have omitted from their brief not only a discussion of the specific deficiencies in the application but even a list of them. It is sought to minimize deficiencies by stating that the principal reason for return was because the balance sheet of a partner was dated subsequent to the date of the verification of the application (Appellants' Br. 2-3). In fact, this was merely one of several deficiencies, discussed below, which cumulatively made the "application" substantially incomplete (Statement, supra, pp. 3-4).

(1) Appellants failed to supply a program schedule for a typical week with classes of programs indicated thereon, although such a schedule is explicitly required by Section IV, Paragraph 2(b), of Form 301. As noted, appellants do not refer to this deficiency in their brief. In the petition for reconsideration filed with the Commission, however, they sought to excuse the omission on the grounds that in appellants' view a program schedule is not important (R. 81-82) and that it appears from a letter furnished to the Commission with the petition for reconsideration (R. 90) that appellants simply "took a sampling of the logs for Radio Station



KCOY in Santa Maria, and applied those percentages to the proposed operation in Atascadero."<sup>5</sup> It is surprising that appellants would regard as helpful to their cause an admission of such a casual attitude toward the responsibility of presenting a program proposal designed to meet the needs of the city proposed to be served (Atascadero).

The cavalier attitude of appellants toward the requirements imposed by the Commission for applicants is not a result of inexperience. As pointed out (Statement, supra, p. 2 ), two of the three appellants are the principal owners of station KCOY in Santa Maria. In this capacity they have previously had occasion to prepare applications to the Federal Communications Commission, and this Court may judicially notice from the Commission's records that the present case is not the first time appellants have had applications returned as defective.<sup>6</sup>

(2) Appellants failed to execute the application in the name of the applicant as specifically required by Instruction D, which appears on the first page of the form. Since the statute requires applications to be verified, it is not unreasonable to require that the applicant on whose behalf the application is sworn be accurately described on the signature page.

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<sup>5</sup> It is interesting to note that in the corrected, untimely application tendered May 22, 1959, appellants actually did use photostats of KCOY logs as the typical program schedule for the proposed Atascadero station (R. 36-37).

<sup>6</sup> See FCC File No. BR-1504, an application for renewal of license filed by station KCOY and signed by appellant Ranger as president of the licensee. The application was returned twice by the Commission. The first time was on September 25, 1956 because several parts of the application incorrectly identified the applicant and because the engineering portion was not signed. The second time was on October 11, 1956 when the verification of the application occurred prior to dates of other parts of the application.



(3) The partnership agreement was not dated, thus raising a question as to its legally binding nature or the accuracy of the copy furnished, or both.

(4) Home addresses of two of the partners were omitted from Section II, Table I, although clearly required by the Form.

(5) The following material questions in Section II were not answered at all:

20. Is the applicant or any party to this application controlled, directly or indirectly, by any person who has any interest in or connection with any broadcast station or application of the type referred to in Paragraphs 19(a) to (d)? If so, submit as Exhibit No. giving full particulars. Yes ☐ No ☐

21. (a) Are any of the parties to this application related to each other (as husband, wife, father, mother, brother, sister, son or daughter)? Yes ☐ No ☐

(b) Does any member of the immediate family (i.e., husband, wife, father, mother, brother, sister, son or daughter) of any party to this application have any interest in or connection with any other broadcast station or pending application? Yes ☐ No ☐

(c) If answer is "Yes" to either (a) or (b) above, state (a) names of the persons, (b) relationship, (c) nature and extent of such interest or connection, (d) name of applicant or call letters of station, (e) file number of application, and (f) location of station or proposed station involved.

Once again, no justification is advanced in Appellants' Brief for this omission, but in the petition for reconsideration filed with the Commission it was said (R. 81) that "the failure to answer paragraphs 20 and 21 is of no significance since the previous applications and ownership reports of Station KCOY, which is owned by two of the three partners, are on file with the Commission." This is an extraordinary argument. In the first place, no effort had been made in the application to incorporate by reference to previous data filed with the Commission. In the second place, even if it be assumed that KCOY filings were complete and accurate, there would be no reason to expect to find data as to appellant Sinclair in those files since he is not a KCOY owner.

The legal position of appellants seems to be that an application must be deemed complete if some of the omitted data could be unearthed by a file search at the Commission in the files for other stations, although such files are not referred to in the subject application. As the Commission properly ruled with respect to such a philosophy (R. 116):

\* \* \* we note that after an application is tendered for filing, it is examined to determine whether such application is substantially complete and acceptable for filing. Clearly, in making this examination, we must accept the contents of the application at their face value, and we cannot be held to surmise that an apparent defect therein is in actuality or upon subsequent explanation not in fact a defect. Any other procedure would only lead to confusion and would tend to encourage the filing of incomplete and poorly prepared applications. Furthermore, the Commission warned, in announcing the amendment to the rule providing for the new cut-off procedure, that potential applicants would be well advised to make certain that their applications are in good order before filing.



(6) No balance sheet was submitted for appellant Zuchelli.

(7) No income statement was submitted for appellant Sinclair.

(8) An Exhibit 2 was referred to in the list of Exhibits which appeared as part of the sworn application, but was omitted from the application without explanation.

(9) The financial statement for appellant Sinclair was verified after the date of verification of the application. Since the signature page of the application specifies that "All the statements made in the application and attached exhibits are considered material representations," it is clear that for the verification to be meaningful the application must be complete when verified. A later dated exhibit is, at least presumptively, added after verification of the application and, therefore, not covered by it.

(10) Insufficient copies of portions of the application were supplied.

This defect, taken alone, would perhaps not render the applications incomplete (Muskingum Broadcasting Company, 19 Pike & Fischer, R.R. 552), particularly if other financial data were supplied which rendered the application substantially complete despite the omission of a properly dated balance sheet. Here, there were numerous deficiencies, financial and otherwise, reviewed above, which collectively made the application substantially incomplete, as the Commission correctly found (R. 116).



It is recognized that the Commission has the discretionary power to waive any rule for good cause shown, including the completeness rule embodied in Section 1.306(a). United States v. Storer Broadcasting Company, 351 U.S. 192. No case has been cited, however, in which the Commission has permitted delay of its processes through nunc pro tunc acceptance of an application which, as originally filed, was as glaringly defective as that in the case at bar. A comparison of the deficiencies in the Muskingum case with those here reveals both a qualitative and quantitative incompleteness in appellants' application not found in Muskingum.

Appellants do not complain of an alleged abuse of the Commission's discretion. They assert a claim of legal right to flaunt the completeness rule with impunity. Such a right is not created by the Commission's past exercises of discretion in accepting partially defective applications in less aggravated situations when the public interest justified an exercise of this discretion in view of all relevant circumstances. The Commission properly refused to exercise its discretion in this case by waiving its completeness rule to give status to appellants' abortive application, or by giving nunc pro tunc status to a late-filed, resubmitted application.

As the Commission pointed out in a similar, although less aggravated case (Community Broadcasting Company, 19 Pike & Fischer R.R. 911), the Commission's cut-off rules "were adopted because of the urgent need for a more expeditious procedure for the processing of standard broadcast applications. We believe that only for the most compelling reasons should a request as made herein be granted" (id. at p. 914).<sup>7</sup>

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<sup>7</sup> In Community an application with engineering dated after the date of verification of the application was held fatally incomplete.

## II

APPELLANTS' CORRECTED APPLICATION TENDERED  
ON MAY 22, 1959 WAS PROPERLY DISMISSED AS  
BARRED BY SECTION 1.106(b)(4) OF THE COMMISSION'S RULES

Appellants do not deny that the May 22, 1959 tender of a corrected application was too late for consideration pursuant to the Commission's "cut-off" rule, Section 1.106(b)(4).<sup>8</sup> This was because the application was mutually exclusive with an application (BP-12068) duly published in a cut-off list on April 8, 1959 as to be deemed ready and available for processing on May 16, 1959 (R. 72). Appellants do contend (1) That the cut-off rules are invalid (Appellants' Br. 22-25), and (2) that the Commission is somehow responsible for appellants' plight because it did not return the abortive April 20 application more quickly (id. 12-14).

Appellants' contentions with respect to invalidity of the cut-off rules are based upon an asserted violation of Sections 4(a) and 4(b) of the Administrative Procedure Act (Appellants' Br. 22-24) and an asserted lack of reasonable relationship between the rules and orderly administrative process (id. 25-26).

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<sup>8</sup> Section 1.106(b)(1) provides: "In broadcast cases, no application will be consolidated for hearing with a previously filed application or applications unless such application, or such application as amended if amended so as to require a new file number, is substantially complete and tendered for filing by whichever date is earlier: (i) the close of business on the day preceding the day the previously filed application or one of the previously filed applications is designated for hearing; or (ii) the close of business on the day preceding the day designated by public notice published in the Federal Register as the day any one of the previously filed applications is available and ready for processing."

Section 1.106(b)(4) provides: "Any mutually exclusive application filed after the date prescribed in sub-paragraphs (1), (2), or (3) of this paragraph will be dismissed without prejudice and will be eligible for refiling only after a final decision is rendered by the Commission with respect to the prior application or applications or after such application or applications are dismissed or removed from the hearing docket."



Intervenors believe these contentions to be without substance since the Commission's opinions dealing with the adoption of the rules establish (1) the urgent need in the public interest for immediate promulgation of the rules pursuant to the provisions of Section 4 of the Administrative Procedure Act, and (2) the very substantial relationship between the rules and orderly administrative process. As indicated in the Questions Presented, intervenors also believe that this appeal is limited by the Notice of Appeal to consideration of the alleged violation of Section 4 of the Administrative Procedure Act, and no general attack on the cut-off rules should be entertained. In the interest of avoiding duplication, intervenors hereby incorporate by reference the discussion of these matters in the Appellee's Brief.

We do wish to comment briefly upon the contention that the Commission was at fault in not returning appellants' abortive April 20, 1959 application in time for appellants to complete and tender a correct application by the May 15, 1959 cut-off date (Appellants' Br. 12-14).

The argument, as stated by appellants, is that the Commission in the course of its very preliminary screening of the abortive application for completeness should have made an engineering study to determine if the application was in conflict with others and should have made an independent check to determine if cut-off dates were applicable as a result. From this dubious premise, appellants conclude that (Appellant's Br. 14):

\* \* \* this Court should not sanction the unreasonable and unexplained delay followed [ sic ] by the Commission for it cannot be said that such delay will serve the public interest.

The argument is a startling one. It may be agreed that delay is not in the public interest, and we respectfully suggest that the Commission's requirements that applications be substantially complete



and be filed by specified dates are calculated to reduce delays. No better way of causing delays can be envisioned than to require the Commission to give priority to consideration of possible problems of would-be applicants who file incompetently prepared and patently defective "applications" shortly before cut-off dates. It would place wholly unreasonable burdens upon the Commission and would go far to destroy the benefits of expedited processing procedures.

Appellants have offered no reasonable ground for seeking a waiver of the cut-off rules based upon any equity discernible in their position. They had ample opportunity to file their application sooner if they desired to avoid the risk of delays inherent in the procedure for return of a defective application. The competing applications of Arment and intervenors had been on file some 10 months and 5 months respectively when appellants first tendered their incomplete application (Statement, supra, p. 3).

Appellants, as owners of an existing Santa Maria radio station (KCOY), have a competitive interest in seeking to delay or obstruct intervenors' efforts to provide that city with a new radio service. This competitive interest was expressly asserted in a petition to intervene filed in the proceedings on intervenors' application (FCC Docket No. 13331) on March 8, 1960, some months after appellants' application had been dismissed as untimely filed (R. 72). Appellant Ranger there stated under oath on behalf of Arenze Broadcasters, licensee of station KCOY, that

\* \* \* Arenze Broadcasters will be economically injured by a grant of the application of Cal-Coast Broadcasters for Santa Maria, California (BP-12613) as set forth in the attached petition for leave to intervene.

Under the circumstances, the objectives of appellants in seeking to secure consideration of their late-filed application are open to question.

Certainly they made no showing that the public interest would be served by permitting their application to be given nunc pro tunc status so as to entitle it to belated consideration with that of intervenor. The application of intervenors has now completed the hearing process and been granted, although petitions for rehearing by appellants and another Santa Maria competitor are still pending (Statement, supra, p. 2).

In summary, the orders of the Commission in the case at bar were lawful and no abuse of discretion has been shown. To the contrary, any different disposition of this case by the Commission would have opened wide the door to a myriad of inadequately prepared and incomplete applications which would seriously burden the Commission's processes.

### CONCLUSION

For the foregoing reasons, and those stated in the brief for appellee, the order dismissing appellants' application, as reaffirmed on reconsideration, should be affirmed.

Respectfully submitted,

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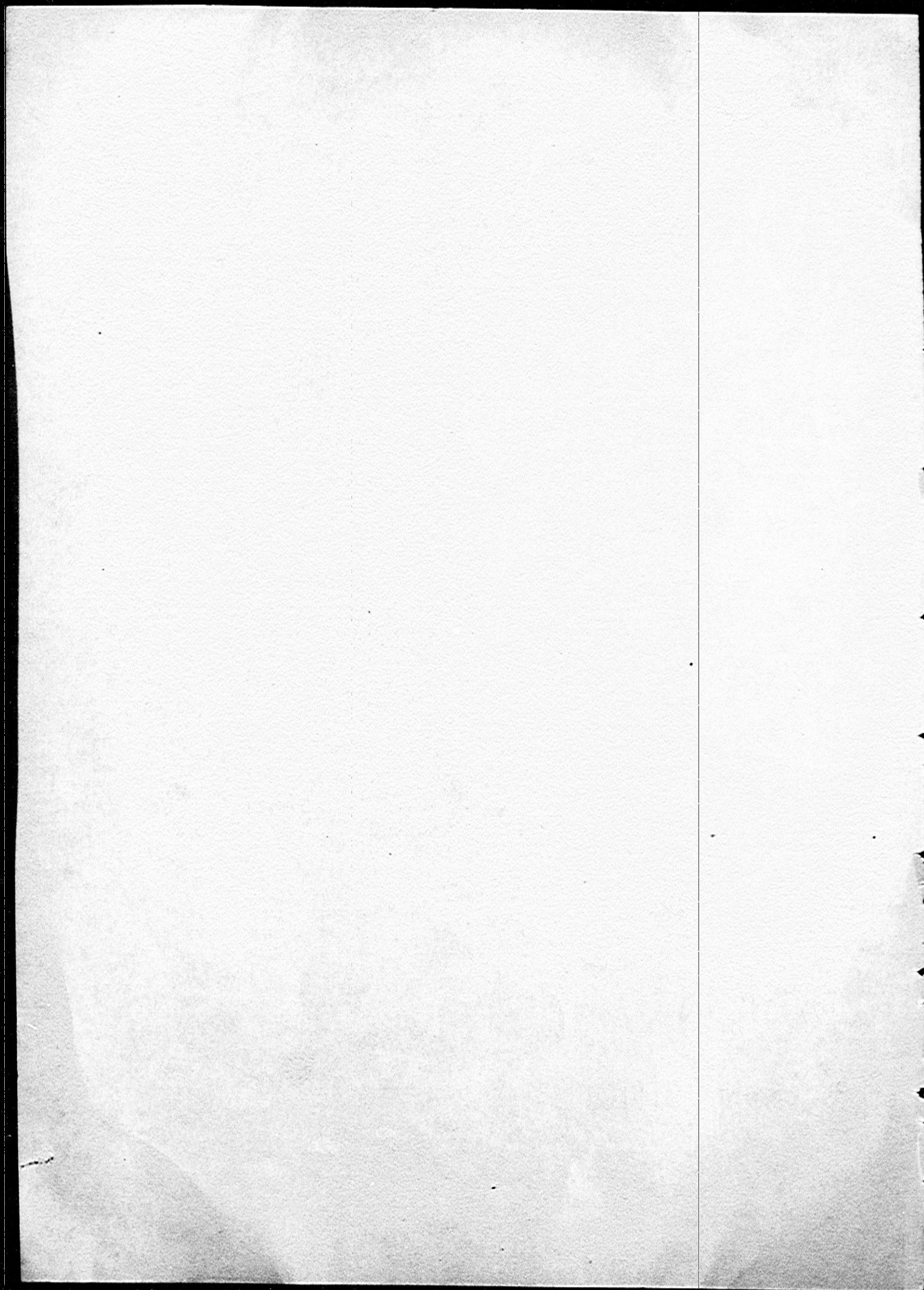
Of Counsel:

Haley, Wollenberg & Bader

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<sup>9</sup> In a subsequent pleading filed by Cal-Coast Broadcasters in FCC Docket No. 13,331 (Opposition to Petition for Stay, December 5, 1960) sworn engineering information was adduced which indicated that, if appellants really desired an Atascadero station, they could have applied for other available frequencies which would not have caused a conflict with intervenors' application or any other pending application. This remedy would still presumably be available to them. If followed, it might well make it possible for appellants to secure a grant without the burdensome delays inherent in a comparative hearing. This would also make possible the prompt inauguration of intervenors' proposed Santa Maria station.







REPLY BRIEF FOR APPELLANT

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,714

*United States Court of Appeals  
For the  
District of Columbia Circuit*

FILED JAN 27 1961

JAMES H. RANGER,  
WILLIAM R. SINCLAIR,

*Joseph W. Stewart*

CLERK

and

ED J. ZUCHELLI,  
d/b as RADIO CABRILLO,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee,

EDWARD E. URNER

and

BRYAN J. COLEMAN,  
d/b as CAL-COAST BROADCASTERS,

Intervenor.

Appeal from the  
Federal Communications Commission

Of Counsel:

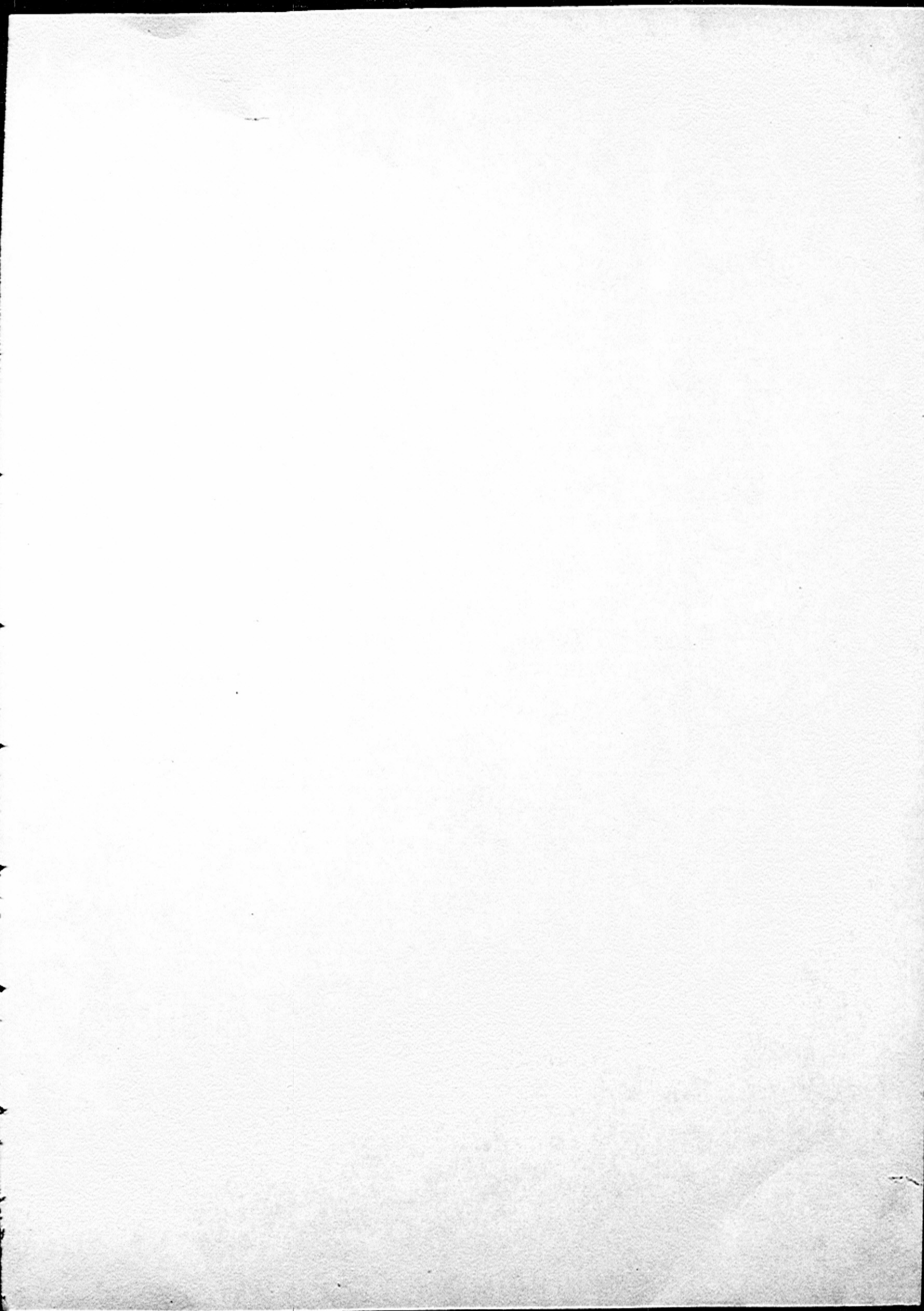
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January 27, 1961





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UNITED STATES COURT OF APPEALS  
For The District Of Columbia Circuit

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No. 15,714

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JAMES H. RANGER,  
WILLIAM R. SINCLAIR,

and

ED J. ZUCHELLI,  
d/b as RADIO CABRILLO,

Appellant,

v.

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Appellee,

EDWARD E. URNER

and

BRYAN J. COLEMAN,  
d/b as CAL-COAST BROADCASTERS,

Intervenor.

---

Appeal from the  
Federal Communications Commission

---

REPLY BRIEF FOR APPELLANT

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## I

THE COMMISSION'S CUTOFF RULE AMENDMENTS WERE  
NOT THE RESULT OF AN EMERGENCY AND THEREFORE  
REQUIRED PRIOR PUBLIC RULE MAKING PROCEEDINGS

In its brief, Appellee asserts that the Commission's cutoff rules, as amended, merely set time requirements for the filing of applications, but concedes that the cutoff rule may well be of a substantive nature (Appellee's Br. 16, 17). The Commission then goes on to assert, for the first time anywhere, that the exigencies of the situation, as it existed with respect to the AM processing line,<sup>1</sup> excused its failure to follow Section 4(a) of the Administrative Procedure Act. However, the problem was not one that arose overnight but, as the Commission recognized, had been a matter of concern for some time (Appellee's Br. 18).<sup>2</sup> To qualify under the exception to conformance with the requirements of Section 4(a) of the Administrative Procedure Act, the emergency must be newly discovered and must be of such a nature that public rule making is not possible because the immediate implementation of new or amended rules is absolutely necessary (e.g., safety of the public on aircraft).<sup>3</sup>

## II

THE NEW CUTOFF RULES DO NOT SET TIME  
REQUIREMENTS FOR FILING APPLICATIONS

The acknowledgment by the Commission of the drastic nature of the new cutoff rules goes far to clarify the true nature of the amended rules. Thus, the allegation that the amended rules simply established

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<sup>1</sup> The problems involved engineering matters. No question was raised by the Commission concerning Cabrillo's engineering showing.

<sup>2</sup> In its Petition for Reconsideration of the adoption of the cutoff rules, the Federal Communications Bar Association commented: "FCBA believes that this unfortunate condition is not the result of a sudden emergency; on the contrary, it is a condition which has existed for a substantial period of time."

<sup>3</sup> Attorney General's Manual on The Administrative Procedure Act, page 30.

time requirements for the filing of applications (Appellee's Br. 16) loses all credence. The amended rules were established not to set time requirements, but to cut off, and eliminate, as much as possible, the filing of new or amended applications. The so-called setting of "time requirements" is nothing but an excuse to make the means justify the results.

Indeed, instead of setting time requirements, the Commission has in fact made the filing of applications an expensive game of blind man's buff, for it is almost impossible to know whether or when an application, other than one listed on the cutoff list, is going to achieve a protected status.<sup>4</sup> This is perhaps best shown by the fact that on the first cutoff date,<sup>5</sup> over 150 applications were filed involving engineering matters. Thus, even if a prospective applicant's proposal would not in any way be involved with an application on the cutoff list, the proposal could nevertheless be frozen out if one or more of the last-minute filings created a situation that involved a chain reaction of interference with the application on the cutoff list and which would have also had an interference problem with the prospective applicant. In other words, there may not be any notice to the public whatsoever that an application will obtain a protected status. It is clear, therefore, that the rules do not set time requirements by giving notice that an application will achieve a protected status as of a certain date except as to those applications on the cutoff list.

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<sup>4</sup> See Appellant's brief in Ridge Radio Corporation v. Federal Communications Commission, Case No. 15,946, United States Court of Appeals for the District of Columbia.

<sup>5</sup> The first cutoff date (May 15, 1959) fell thirty days after the publication of the cutoff list containing 269 applications.

## III

THE ASHBACKER<sup>6</sup> CASE WAS NOT CITED AS REQUIRING A  
HEARING ON AN UNTIMELY FILED APPLICATION

The Commission erroneously asserts (Appellee's Br. 22) that Cabrillo claims that the hearing rights set forth in the Ashbacker case are violated with respect to an untimely filed application by the new cutoff rules. The reference to the Ashbacker case at page 11 of Appellant's brief was in support of Cabrillo's contention that an application which meets the requirements of Section 308(b) of the Communications Act, and is timely filed (as was the original Cabrillo application), is entitled to a hearing before it can be denied.

## IV

THE APPLICATION OF RADIO CABRILLO MET THE REQUIRE-  
MENTS OF SECTION 308(b) OF THE COMMUNICATIONS ACT

The Commission (Appellee's Br. 24) and the Intervenor (Intervenor's Br. 10) concede that if an application complies with the requirements of Section 308(b) of the Communications Act, it is entitled to the procedures set forth in Section 309. It is not disputed that all five sections of the application and the associated exhibits were timely filed on April 20, 1959. The question to be answered, then, is whether the information supplied by Cabrillo when it filed its application on April 20, 1959, satisfied the basic requirements of Section 308(b). This will be gone into below.

Citizenship — The application indicated that all three partners were citizens of the United States.

Character — The character questions of the application (Section II, item 10) were all answered. No adverse qualifications were indicated.

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<sup>6</sup> Ashbacker Radio Corporation v. Federal Communications Commission, 326 U.S. 327, 90 L.Ed. 108.



- Financial — Section III, the financial portion of the application, was submitted. No question has ever been raised that the applicant did not make a financial showing sufficient to satisfy construction and operation costs.
- Technical — A complete engineering report, prepared by a professional consulting engineer, was filed with the application. No question was ever raised as to its completeness.
- Ownership — Radio Cabrillo filed the partnership agreement and answered all questions concerning ownership (Section II of the application).
- Location — In Sections I and V-A, Cabrillo specified the location of the station by city, county, state, and geographical coordinates.
- Frequency — In Sections I and V-A, Cabrillo specified the frequency proposed to be used.
- Power — In Sections I and V-A, Cabrillo specified the power proposed to be used.
- Hours of Operation — In Section I, IV, and V-A, Cabrillo specified the hours of operation.
- Purpose of Operation — In Sections I and IV, Cabrillo specified the purpose of the station's proposed operation.
- Other Information — Other information was supplied by Cabrillo in Sections I, II, III, IV, and V-A of the application form.

No question was ever raised by the Commission as to the absence of a showing of the legal, technical, or financial qualifications of Cabrillo to become a licensee. It is clear, therefore, that Radio Cabrillo made a showing sufficient to satisfy the basic requirements of Section 308(b), and that it was entitled to a Section 309(b) letter before its application could be denied (or dismissed).

# V

## THE ALLEGATION THAT THE APPLICATION OF RADIO CABRILLO WAS NOT SUBSTANTIALLY COMPLETE IS ERRONEOUS

The Commission (Appellee's Br. 25, 26) and Intervenor (Intervenor's Br. 11-16) lay great stress on the "incompleteness" of the Radio Cabrillo application,<sup>7</sup> and Intervenor implies that failure of Appellant to go into the matter item by item in its brief amounts to an admission of incompleteness. In order that the Court will have both sides of the picture in sharp focus, the individual items will be gone into below.

(a) The application was dated and verified on April 7, 1959, whereas the balance sheet of William R. Sinclair was verified on April 10, 1959.

The Commission's Memorandum Opinion and Order stated that the conflict of dates did not make the application or the balance sheet void (19 R.R. 1189). The application form does not require that a balance sheet of a partner to the applicant be verified (Section III). No finding was made by the Commission that Cabrillo lacked the necessary financial qualifications.

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<sup>7</sup> Appellee and Intervenor, by their silence, apparently concede that there are no standards, policy guides, or anything else by which the staff can determine whether an application is "substantially complete." It is the staff, and not the Commission, that makes this decision.

(b) Section I was not executed in accordance with Instruction D because the partners' names did not appear exactly as in the partnership agreement.

Instruction D states: "The name of the applicant stated in Section I hereof shall be . . . the names of all partners and the name under which the partnership does business; . . ." At the top of the first page of Section I, the following appears: "James H. Ranger, Ed John Zuchelli and William Robert Sinclair — Radio Cabrillo." The application is signed and verified: (Name of Applicant) "Radio Cabrillo" (By) "James H. Ranger" (Title) "Partner." Just how the above violates Instruction D is difficult to determine unless it is because the partnership agreement does not spell out the middle names but gives only the initials of Mr. Zuchelli and Mr. Sinclair. (R. 20-24).

(c) The partners' residence addresses were not given.

While it is true that on Table I of Section II the residences of Mr. Zuchelli and Mr. Sinclair were not given, Table II of the same section showed that all partners were engaged in the day-to-day operation of KCOY, Santa Maria, California. The residence addresses have no bearing on the qualifications of a licensee.

(d) Paragraphs 20 and 21 of Section II were not answered.

Question 20 inquires whether the applicant or any party to the application is "controlled" by a



person who has an interest in a radio station. In the absence of slavery, no individual or individuals in a partnership can, in the normal sense of the word, be controlled by another person. The question, if it has any meaning or significance at all, can only be answered in the negative. The question was obviously framed to cover corporate parties as stockholders or partners, neither of which are present here. Question 21(a) inquires as to whether any parties to the application are husband, wife, father, mother, brother, sister, son or daughter of another party; and 21(b) inquires as to whether any of the immediate family of a party have an interest in a radio station. Questions 21(a) and 21(b) are nothing but miscellaneous information. Family relationships are only gone into, and then rarely, in hearings involving concentration of control of broadcast media. Such matters do not affect basic qualifications.

(e) A balance sheet for Mr. Zuchelli was not supplied.

Instead of a personal balance sheet, Mr. Zuchelli furnished a balance sheet of Arenze Broadcasters, licensee of Station KCOY, in which he is a 50% stockholder. In addition, Mr. Zuchelli supplied information as to his personal income after taxes. No question was raised by the Commission as to Mr. Zuchelli's financial qualifications.

(f) Mr. Sinclair did not furnish a statement of income.

The financial qualifications of a party are dependent on his ability to meet his commitment to the applicant. The presence or absence of income is

immaterial if the party shows his ability to meet his commitment. Again, no question was raised as to financial qualifications.

(g) A program schedule was not submitted.

This absence of a program schedule is not as serious as Intervenor claims. It has never been held to be a "major" omission, and when an application is filed without one (as they often are), the applicant is simply asked to furnish one after the application is accepted. All other pertinent parts of the programming portion of the application (Section IV) were answered, including a detailed analysis of the program schedule. The schedule itself is only needed to support the analysis.<sup>8</sup>

(h) Exhibit No. 2, regarding an option on the land, was not submitted with the application.

The reason for the absence of the option on the land (Exhibit No. 2) is obvious from Section III of the application. As revealed in Section III, the land had been purchased for the sum of \$4,000.00. Moreover, the application does not require any showing as to the availability of land.

A good illustration of the confusion surrounding the Commission's return of the Cabrillo application is found on page 15 of the Intervenor's brief. There, it is erroneously alleged that one of the deficiencies in the Cabrillo application was that insufficient copies had been supplied. The fact is that the Commission's letter (R. 1, 2; Appellee's Br. 5) stated that too many copies had been supplied and that only three were needed.

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<sup>8</sup> See Hearst Radio, Inc., 3 R.R. 731 (1946) and The Four States Broadcasting Co., 18 R.R. 616 (1959).

All of the above matters were brought to the Commission's attention in Cabrillo's "Petition for Reconsideration and Reinstatement of Application, Nunc Pro Tunc . . ." (R. 74). It was further argued that the Commission had, in other similar cases, reinstated applications nunc pro tunc. The Commission's refusal to reinstate the Cabrillo application and the denial of its petition were, therefore, abuses of its discretion in light of prior precedent and the duty of the Commission to encourage a fuller use of radio (Communications Act, Section I; Appellant's Br. 14-21).

## VI

INTERVENOR'S ALLEGATION OF QUESTIONABLE  
MOTIVES IS IMPROPER

Intervenor improperly takes the opportunity of the filing of its brief to attack Appellant's motives.<sup>9</sup> Neither the record of this case nor the facts support the Intervenor's allegations of improper motives, and they are categorically denied. All Radio Cabrillo wants is a full and fair hearing on its application. If the Commission wishes to include an issue on Cabrillo's motives, it will be met. Moreover, the alleged availability of a less desirable frequency or a return to the processing line is no more attractive to Cabrillo than it is to Intervenor.

At the time Cabrillo filed its application (April 20, 1959), Intervenor was already faced with a hearing with another applicant for Atascadero.<sup>10</sup> Except for the unforeseen dismissal of the other Atascadero applicant, Intervenor would have been faced with a hearing irrespective of Cabrillo's application. Moreover, it was the other application

<sup>9</sup> The allegations raised here by Intervenor are the same which it raised (improperly) before the Commission in other pleadings. The Commission's treatment of the Cabrillo application and the Petition for Reconsideration indicates that its "discretion" was tempered by these allegations since its decision was contrary to precedent and created a new basis (i.e., collective minor deficiencies) for rejecting a timely filed application and for denying a petition for reinstatement nunc pro tunc.

<sup>10</sup> Jeanette B. Arment, tr/as Radio Atascadero, File No. BP-12068. Dismissed March 14, 1960 (FCC 60M-482).



for Atascadero which caused Intervenor to "jump" the processing line and achieve a protected status. If Intervenor had remained on the processing line, it would not have achieved a protected status until February 26, 1960 (FCC 60-52). The status it now enjoys is not the result of patiently waiting its turn, but is simply a fortuitous condition which permits it to achieve a protected position in spite of the fact that the reason for this status (the Radio Atascadero application) has long since disappeared.

### CONCLUSION

For the foregoing reasons, and for those contained in Appellant's opening brief, it is respectfully submitted that the Appellee's action in (a) denying Appellant's "Petition for Reconsideration and Reinstatement of Application, Nunc Pro Tunc, as of April 20, 1959, or May 15, 1959, and for Other Relief," and (b) dismissing Appellant's application, was erroneous, and that the Court should set aside, vacate, annul, and determine to be invalid those actions and remand this case to the Commission with directions to reinstate the Radio Cabrillo application as of April 20, 1959, or May 15, 1959. It is further submitted that this Court should set aside, vacate, annul, and declare invalid the amended Sections 1.106(b)(1) and 1.361(b) of the Commission's Rules, as well as grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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William R. Sinclair, and  
Ed. J. Zuchelli, d/b as  
RADIO CABRILLO

Of Counsel:

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January 27, 1961

BRIEF FOR APPELLEE

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

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*United States Court of Appeals  
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FILED

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ON APPEAL FROM A DECISION AND ORDERS OF THE  
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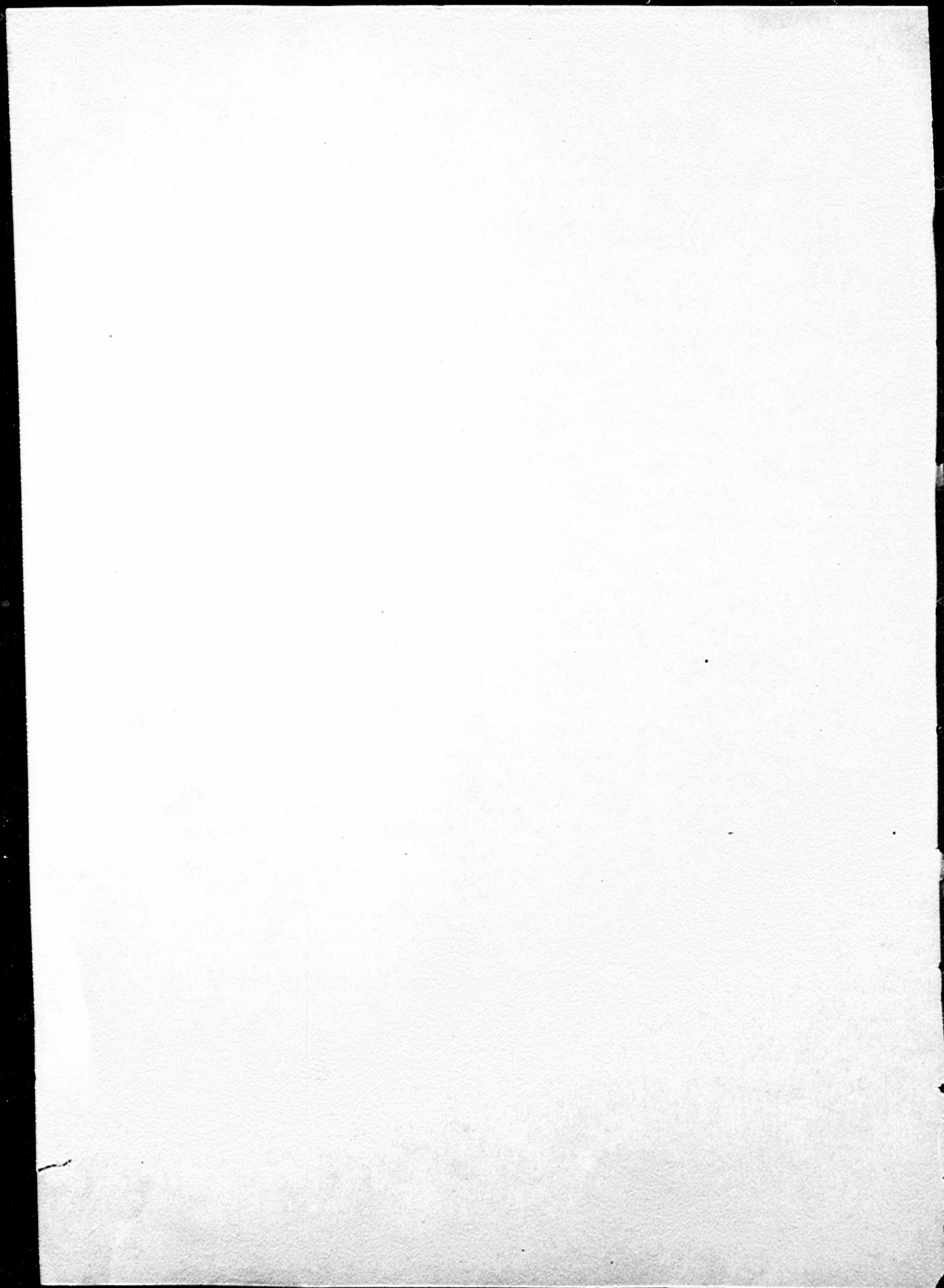
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### STATEMENT OF QUESTIONS PRESENTED

Counsel for the parties entered into a Prehearing stipulation approved by Order of this Court dated July 21, 1960. The questions, as stipulated (with the qualifications therein noted), are as follows:

1. Whether the Commission's action of May 7, 1959, returning appellants' application for a new standard broadcast station, its action of December 22, 1959, dismissing appellants' resubmitted application as untimely filed, and its action of April 4, 1960, denying appellants' "Petition for Reconsideration and Reinstatement," were arbitrary, capricious and contrary to the public interest in that:

a. the return of appellants' application as not substantially complete was improper;

b. the delay in returning appellants' application was unreasonable and deprived appellants of an opportunity to refile their application in a timely manner and to obtain a comparative hearing with the application of intervenors;

c. the return of appellants' application was effected without complying with the notice and opportunity to reply provisions of Section 309(b) of the Communications Act of 1934, as amended.

2. Whether Sections 1.106(b)(1) and 1.361(b) of the Commission's Rules, under which appellants' resubmitted appli-

cation was dismissed, are invalid in that they were adopted in a manner contrary to Sections 4(a) and 4(b) of the Administration Procedure Act. Counsel for appellants believes that the following question is also presented:

3. Whether Sections 1.106(b)(4) and 1.361(b) are arbitrary and capricious and contrary to the public interest in that they have no reasonable relationship to the protection of the Commission's orderly administrative process, and deprived appellants of their right to a comparative hearing.

Counsel for appellee and intervenors are of the view that question No.3 is not properly presented since the question is not within the scope of the appellants' Notice of Appeal.

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 15,714

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JAMES H. RANGER,  
WILLIAM R. SINCLAIR,  
and  
ED J. ZUCHELLI,  
d/b/a RADIO CABRILLO,  
Appellants,

v.

FEDERAL COMMUNICATIONS COMMISSION,  
Appellee,

EDWARD E. URNER  
and  
BRYAN J. COLEMAN,  
d/b/a CAL-COAST BROADCASTERS,  
Intervenors.

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ON APPEAL FROM A DECISION AND ORDERS OF THE  
FEDERAL COMMUNICATIONS COMMISSION

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BRIEF FOR APPELLEE

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COUNTERSTATEMENT OF THE CASE

The appellants' statement of the case is deficient in several material respects. It is believed that a full statement of the pertinent facts will be of assistance to the Court.

This is an appeal from a Memorandum Opinion and Order of the Federal Communications Commission, released April 4, 1960, which denied appellants' James H. Ranger, William R. Sinclair, and Ed. J. Zuchelli, d/b/a Radio Cabrillo, petition

for reconsideration of the Commission's December 22, 1959 Order, which dismissed appellants' application for a new standard broadcast station at Atascadero, California, and for reinstatement of the application, nunc pro tunc, as of April 20, 1959 or May 15, 1959. The subject appeal raises questions concerning (1) the validity of the Commission's "cut-off" rules adopted in a Report and Order, released April 9, 1959 (18 Pike & Fischer, R.R. 1565), in an effort to provide for a more expeditious procedure for the processing of standard broadcast applications; (2) the validity of the Commission returning appellant's application as not "substantially complete"; pursuant to its Rules; and (3) the validity of the Commission's action refusing, in its discretion, to permit the nunc pro tunc reinstatement of appellants' previously dismissed application. It would, in our opinion, be of material assistance to the Court if it had before it a brief recitation of the critical situation and the urgent considerations which led to the adoption of "cut-off" rules.

#### Preliminary Statement

The Commission's new "cut-off" rules were adopted because of the urgent need for a more expeditious procedure for the processing of standard broadcast applications. Under the Commission's basic procedures, adopted as a result of the Supreme Court decision in Ashbacker Radio Corp. v. Federal Communications Commission, 326 U.S. 327 (1945), applications for new broadcast facilities which are mutually exclusive (in

the sense that interference considerations would permit a grant of only one application) are considered together in consolidated proceedings. (See Sections 1.106(b)(1) and 1.361(b), 47 CFR 1.106(b)(1), 1.361(b)). Prior to their amendment, the rules permitted the filing of new conflicting applications or the amendment of pending applications at any time prior to the day before the Commission's taking action on the principal application. The Commission found that these procedures resulted in the filing of an almost endless chain of new applications and amendments which, in each instance, required a new engineering study by the Commission's staff, resulting in the delay of action on all related applications. Frequently, applications ripe for action would be returned to the processing line because at the "eleventh hour" a new conflicting application, or a conflicting amendment to an existing application, was filed. Upon being re-processed and made ready for Commission action, these applications were once again met by a new conflicting application or amendment.

As the Commission pointed out in its Report and Order amending the rules (18 Pike & Fischer, R.R. 1565, 1566), during a 30-day period, prior to their adoption, although more than 300 applications were partially processed by the Commission's engineering staff, to determine the effect of new filings or amendments on interference conditions, only 33 of these were placed on the Commission's agenda for action. During that same period, not a single application was removed from the



top of the processing line for action. Nevertheless, the number of applications under study increased because of the necessity for grouping additional applications with those already under study. The Commission found that, by reason of these procedures, its backlog of pending applications - which could not be processed to fruition because of the necessity of reprocessing of new filings and amendments - had increased to the point where an applicant had to wait for seven months to a year for action, a delay which it concluded was neither conducive to the public interest nor equitable to the applicant. The situation became so critical that it was concluded that, unless a new procedure was immediately devised, the logjam of applications threatened to paralyze the processing line, thereby preventing the Commission from fulfilling its statutory obligations. Because of this urgent situation, the Commission found it necessary to adopt the new "cut-off" rules. It is against this background of this pressing situation that this case, and the validity of the Commission's action amending its "cut-off" rules, must be viewed.

#### Statement of Facts

On April 20, 1959, James H. Ranger, William R. Sinclair, and Ed J. Zuchelli, d/b/a Radio Cabrillo ("Cabrillo"), tendered for filing an application with the Commission requesting a construction permit for a new standard broadcast station to operate on 1480 kc, daytime only, with a power of 500 watts, at Atascadero, California (App. Br.

Appendix C). On May 7, 1959, the Commission returned the Cabrillo application as not acceptable for filing, it being found to be not "substantially complete" as required by Section 1.306 of the Commission's Rules (R. 1-2).<sup>1/</sup> In its May 7, 1959 letter to Cabrillo, the Commission set forth the application's deficiencies as follows (see R. 1-2):

Gentlemen:

Returned herewith is the application for construction permit to erect a new standard broadcast station at Atascadero, California. Upon examination we find it is not acceptable for Commission consideration in its present form.

The application is dated and verified as of April 7, 1959, whereas the financial statement of William R. Sinclair has been signed and verified on April 10, 1959. All sections and exhibits must be dated the same date as, or prior to, the date and verification of Section I.

Section I has not been executed according to instructions in Paragraph D of the application form. The names of the partners must appear as shown in the partnership agreement. Also, the partnership agreement is not dated.

In Section II, Table I, column (a), you failed to give home street addresses for all

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<sup>1/</sup> Section 1.306 of the Commission's Rules, 47 C.F.R. 1.306 reads, in pertinent part, as follows: "(a) Applications which are tendered for filing in Washington, D.C. are dated by the Office of the Secretary upon receipt and then forwarded to the Broadcast Bureau where an administrative examination is made to ascertain whether the applications are complete. Applications found to be incomplete or substantially complete are accepted for filing and are given a file number. In case of minor defects as to completeness, the applicant will be requested to supply the missing information. Applications which are not substantially complete will be returned to the applicant". (Emphasis added).

partners. Too, you failed to answer Paragraph 20 and 21 of Section II. All pertinent parts of the application must be answered.

It is requested that a personal Balance Sheet be submitted for Ed J. Zuchelli. Also, the net income for the past two years be submitted for Wm. R. Sinclair.

Your application fails to disclose the schedule of programs of the typical week of your proposed operation. Paragraph 2(b), Section IV, specifically requests that such a schedule be submitted and that there be indicated thereon the class of each program in accordance with the Program Classification stated on Page 4 of this section. Three copies are necessary.

It is noted that no Exhibit "2", as listed in Section I, page 2, regarding option on land, was received with the application. Instruction C, Section I, requires that all Exhibits be properly numbered.

In accordance with Instruction B, of Section I, it is necessary to file only three copies of the application (two additional copies of Section V-G and Exhibits).

When resubmitting the application, Section I should be sworn to by one of the partners as of a current date. Forms are enclosed for your convenience in refiling.

Very truly yours,

Mary Jane Morris  
Secretary

Following the receipt of the Commission's May 7th letter, Cabrillo resubmitted its application on May 22, 1959 (R. 3-71). As indicated above, the Commission in a Report and Order, adopted April 8, 1959, amended its "cut-off" rules (Sections 1.106(b)(1), 1.354 and 1.361(b), 47 U.S.C. 1.106(b)(1), 1.354, 1.361(b)), effective May 16, 1959, to establish a new procedure



for the processing of applications for standard broadcast stations. The rules, as amended, provide, in substance, that the Commission will periodically publish in the Federal Register a list of applications which are near the top of the processing line and announce a date (not less than 30 days after publication) on which the listed applications will be considered ready for processing. Under the amended rules, all applications which desire to be considered in the same proceeding with any one of the listed applications must have been on file by the following dates, whichever is earlier: (1) the close of business on the day before action, i.e., grant or designation for hearing, on the earlier filed application, or (2) the close of business on the day before the date fixed by the Public Notice published in the Federal Register. The rules further provide that any application which is not substantially complete and tendered for filing by the earlier "cut-off" date, or which is amended to change its engineering proposal after the earlier date, will not be entitled to consolidation in a hearing involving any of the listed applications.

On April 9, 1959, the Commission published its first list of applications ready for processing, and announced May 15, 1959, as the latest date by which new applications or amendments to existing applications must be filed, in order to be entitled to consideration in the same proceeding involving any applications on the said list. Among the applications

listed on the April 9, 1959 Public Notice, which would receive a protected status on May 15, 1959, was the application of Jeanette B. Arnett, t/a Radio Atascadero ("Radio Atascadero"), filed June 9, 1958, requesting a construction permit for a new standard broadcast station at Atascadero, California, to operate on 1490 kc, unlimited time, with a power of 1000 watts. The effect of this listing was to impose a "cut-off" date of May 15, 1959, for all applications possibly in conflict with the Radio Atascadero application, either directly or indirectly.

On December 22, 1959, the Commission designated for consolidated hearing the applications of Radio Atascadero and that of the intervenors, Edward E. Urner and Bryan J. Coleman, d/b/a Cal-Coast Broadcasters ("Cal-Coast"), which had been filed November 26, 1958, requesting a construction permit for a new standard broadcast station at Santa Maria, California, to operate on 1480 kc, daytime only, with 1000 watts of power. Although the latter application did not appear on the Commission's April 9, 1959 Public Notice, it was in conflict with the Radio Atascadero application because of adjacent channel interference problems. By letter of same date, the Commission, pursuant to Section 1.106(b)(4) of the Commission's Rules,<sup>2/</sup>

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<sup>2/</sup> Section 1.106(b)(4) of the Commission's Rules, 47 U.S.C. 1.106(b)(4), provides that "any mutually exclusive application filed after the close of business on the day preceding the day designated by Public Notice published in the Federal Register as the day any one of the previously filed applications is available and ready for processing, will be dismissed without prejudice and will be eligible for refiling only after a final

dismissed the refiled Cabrillo application as being untimely, i.e., refiled on May 22, subsequent to the May 15th "cut-off" date (R. 72).

On January 18, 1960, appellants filed a petition for reconsideration, and on January 21, 1960, a supplement thereto, of the Commission's December 22, 1959 action dismissing their application, and requested reinstatement of their application, nunc pro tunc, as of April 20, 1959 or May 15, 1959 (R. 73-91, 92-95). In an opposition filed February 1, 1960, Cal-Coast opposed the Cabrillo petition (R. 96-103), to which pleading Cabrillo replied on February 11, 1960 (R. 104-107). In a Memorandum Opinion and Order, released April 4, 1960 (R. 113-118), the Commission denied Cabrillo's petition for the reasons therein stated (R. 113-118). After fully discussing Cabrillo's arguments and stating in detail its reasons why it was found they had no merit, the Commission concluded: "We have permitted such amendments /nunc pro tunc/ in the past only where it would be consistent with the equities of the particular factual circumstances involved. (See Johnston Broadcasting Company v. Federal Communications Commission, 5 Pike and Fischer, R.R. 1320). Since petitioner submitted an incomplete application which was returned in accordance with the usual procedure, we do not believe that petitioner has

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2/ (cont'd) decision is rendered by the Commission with respect to the prior application or applications or after such application or applications are dismissed or removed from the hearing docket".



acquired any equities which would warrant granting this request". (R. 117-118).

Appellants filed a Notice of Appeal on May 4, 1960. Cal-Coast, pursuant to the provisions of Section 402(e) of the Communications Act, 47 U.S.C. 402(e), filed a Notice of Intention to Intervene in this appeal on May 31, 1960.

#### SUMMARY OF ARGUMENT

##### I.

The Commission's "cut-off" rule amendments, adopted without the issuance of a Notice of Proposed Rule Making, did not violate pertinent provisions of Section 4 of the Administrative Procedure Act. Their adoption was imperatively required in the public interest, and although they may result in a late-filed applicant losing the opportunity for comparative consideration of his application with that of a timely-filed mutually exclusive application, this result violates neither the letter nor the spirit of Ashbacker Radio Corporation v. Federal Communications Commission, 326 U.S. 327 (1945).

##### A.

An agency's procedural rules are generally deemed to be those rules which provide for the manner in which an agency will transact its business with members of the public. The Commission's "cut-off" rules, as amended, are such rules of procedure, for they simply set time requirements for filing applications. They are not directed to the merits or

demerits in public interest, of an application. Section 4(a) of the Administrative Procedure Act specifically exempts all such rules from the notice and hearing requirements applicable to substantive rules. In any event, the exigencies of the situation facing the Commission required that the rules be implemented immediately, since the delay attendant upon public rule making would have impeded, if not prevented, the due and timely execution of the Commission's functions in the public interest.

B.

The rules adopted by the Commission were essential to the expeditious dispatch of its business in the public interest in view of the then existing circumstances relating to the processing of standard broadcast applications. Amendment of the Commission's prior "cut-off" rules was imperatively required since they were contributing to an amounting backlog of applications. The prior "cut-off" rules permitted the filing of new conflicting applications at any time prior to the Commission's taking action on the principal application, thereby requiring constant reprocessing without finality. The situation became so critical that unless the Commission immediately devised a new procedure the logjam of applications threatened to paralyze the processing line. It was in the face of this urgent situation that the Commission adopted the new rules.



C.

The effect of the rules barring late-filed applicants from consolidation with those designated for hearing on a particular "cut-off" date, violates neither the letter nor the spirit of the Ashbacker case. There is no suggestion in Ashbacker that the Commission is precluded from fixing a date subsequent to which it will not afford an application comparative consideration with a conflicting application or application filed prior to the date. To hold otherwise would be to vest a legal right in a late-filed applicant, entitling him to comparative consideration with a timely-filed competing application, thereby delaying expeditious disposition of the timely-filed application. We know of no rule of law which requires a result so antipathetic to the public interest.

II.

The Commission, in returning Cabrillo's original application as being not substantially complete, pursuant to Section 1.306(a) of its Rules, properly concluded that "collectively" the application lacked the basic requirements of Section 308(b) of the Act, as implemented by the Commission's application form (FCC Form 301), so that Cabrillo was not entitled to notice under Section 309(b) of the Act, before its application was returned. Cabrillo's claim that there is no precedent for the Commission's action taken here is refuted by the Commission's own Regulations and Application



Form and by those precedents cited by the Commission in its Opinion and Order here under review. In Cabrillo's particular case, the Commission found that its application was insufficient in various respects which, considered collectively, rendered the application incomplete. Accordingly, the Commission's return of the original Cabrillo application, pursuant to Section 1.306(a) of its Rules, must be sustained.

III.

The 18-day period between April 20, 1959, when Cabrillo submitted its original application, and May 7, 1959, when it was returned as substantially incomplete, was reasonable when judged against the critical situation confronting the Commission in the light of its continuously mounting backlog of applications for broadcast authorizations. As for Cabrillo's claim that the Commission's May 7th letter prevented it from resubmitting its application before the May 15 "cut-off" date, this result was the direct consequence of Cabrillo's original submission of an inadequate application, and not the consequence of any undue delay on the Commission's part. Since Cabrillo's resubmitted application conflicted with the Radio Atascadero application, which appeared on the May 15 "cut-off" list, the Commission, under the provisions of Section 1.106(b)(4) of its Rules, properly dismissed the application as untimely filed. In these circumstances, it cannot reasonably be claimed that the Commission was under a duty - to the prejudice of other properly filed applicants - to reinstate Cabrillo's application, nunc pro tunc, thereby affording it comparative consideration with the others.

ARGUMENT

I. THE COMMISSION'S AMENDMENTS TO ITS STANDARD BROADCAST PROCESSING RULES WERE IMPERATIVELY REQUIRED IN THE PUBLIC INTEREST AND THEIR ADOPTION WAS NOT CONTRARY TO LAW.

The appellants' brief raises two major questions concerning the validity of the Commission's "cut-off" rules (Sections 1.106(b)(1), 1.354, and 1.361(b), 47 C.F.R. 1.106(b)(1), 1.354, and 1.361(b)). Initially, appellants argue that their adoption violated Sections 4(a) and 4(b) of the Administrative Procedure Act, 47 U.S.C. 1003(a), 1003(b), because they were effected without the benefit of the procedural requirements set forth in those sections (Br. 22-24). Secondly, it is contended that the rules are invalid in that their practical effect is to deprive applicants of their rights to comparative consideration with mutually exclusive applications, guaranteed by Ashbacker Radio Corp. v. Federal Communications Commission. 326 U.S. 327 (1945) (Br. 24).<sup>3/</sup>

We shall show that the Commission's "cut-off" rule amendments, adopted without the issuance of a Notice of Proposed Rule Making, did not violate pertinent provisions of Section 4 of the Administrative Procedure Act; that their adoption was imperatively required in the public interest; and that, although they may result in a late-filed applicant

<sup>3/</sup> Additionally, appellants argue that the amended "cut-off" rules "had no reasonable relationship to the protection of the Commission's administrative process". (Br. 23) Although, we respond to this contention in subsection B, infra, we do not, in any event, concede that this question is properly before the Court. (See Statement of Questions Presented, p. (i)).



losing the opportunity for comparative consideration of his application with that of a timely-filed mutually exclusive application, this result violates neither the letter nor the spirit of the Ashbacker case.

A. The Commission's "Cut-off" Rule Amendments, Being Procedural In Nature, Did Not Require Prior Public Rule Making Proceedings.

The appellants' argument (Br. 22-24) that the Commission's "cut-off" rules were adopted in a manner contrary to Sections 4(a) and 4(b) of the Administrative Procedure Act, raises the question whether the amended rules are procedural or substantive. Cabrillo argues that since the amended "cut-off" rules have the effect of denying a late-filed applicant an opportunity for a comparative hearing, they are substantive in nature and their adoption without a public rule-making procedure, as normally required for substantive rules by Section 4 of the Administrative Procedure Act, renders them invalid.

Although it is difficult to draw a dividing line between procedural rules and substantive rules, it may be said that an agency's procedural rules are generally deemed to be those rules which provide for the manner in which an agency will transact its business with members of the public. For example, if an individual desires to file an application for a radio or television frequency, what should it contain? How is the application to be filed? When and where must the application be filed? These details are procedural



in nature and do not concern themselves with the substance of the application, i.e., whether, under the basic provisions of the governing statute and the agency's policies and regulations, it can be found that a grant of the application would serve public interest, convenience, and necessity. Thus, to use some examples in Commission practice, the promulgation of a rule limiting the number of stations any one individual or group can own (Multiple Ownership Rules), the prescription of engineering standards governing the permissible degree of interference that may be caused by daytime stations operating on clear channel frequencies during pre-sunset and post-sunrise hours (Daytime Skywave Rules), or the conditions under which multiplex operations may be carried on by frequency modulation stations (Multiplex Rules), may all be said to be substantive rules which "implement the policy of the statute" (See Attorney General's Manual on the Administration Procedure Act, 1947, p. 30, n3.)

Procedural rules, on the other hand, are merely guides to the invocation of an agency's processes and require no notice of hearing to anyone before adoption, and may likewise be so amended. Section 4(a) of the Administrative Procedure Act specifically exempts all such rules from the notice and hearing requirements applicable to substantive rules and regulations (Attorney General's Manual, ibid.)

The Commission's "cut-off" rules, as amended, are such rules of procedure, for they simply set time requirements for filing applications. They are not directed to the merits or

demerits, in the public interest, of an application. A similar contention regarding the nature of these rules, made by the Federal Communications Bar Association (FCBA), was considered by the Commission and rejected in a Memorandum Opinion and Order, released May 14, 1959 (18 Pike and Fischer, R.R. 1568). The Commission stated its view that the rules were not substantive, for the basic reason that they "determine the time and order in which applications will receive consideration." (18 Pike & Fischer, R.R. at 1568b).

In response to the contention that the notice and public procedure requirements of the Administrative Procedure Act should have been followed, and that the rules should have been published for comment by interested parties, as provided in Section 4 of that Act, the Commission further concluded that:

....the existing conditions required immediate action and /the/ delay resulting from the issuance of a Notice of Proposed Rule Making prior to adoption of the amendments would have rendered conditions in the processing line so chaotic that the only recourse would have been to cease for an indefinite time all processing and consideration of applications for standard broadcast facilities. Hence, in the case of the amendments adopted the issuance of a Notice of Proposed Rule Making and public procedure thereon would have been contrary to the public interest. (ibid.)

It is, therefore, submitted that the Commission's manner of adoption of these rules was in accordance with the provisions of the Administrative Procedure Act.

In any event, and quite apart from the procedural vs. substantive question, the exigencies of the situation facing



the Commission, as found by it in the orders referred to above, as well as in other related orders, (see 18 Pike & Fischer R.R. 1568d, 1568h, 1568m), required that the rules be implemented immediately and that the delay attendant upon public rule making would have impeded, if not prevented, the due and timely execution of the Commission's functions in the public interest. Under these circumstances, the promulgation of the rules here falls within the explicit exception to the notice provisions of Section 4(a) of the Administrative Procedure Act "in any situation in which the agency in good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure therein are impracticable, unnecessary or contrary to the public interest." As is shown in subsection B, infra, the finding by the Commission with respect to the urgency of the situation was fully justified by the critical state of the processing line.

B. The Rules Adopted By The Commission Were Essential To The Expeditious Dispatch Of Its Business In The Public Interest.

The "existing conditions" which underlay the adoption of the amended rules were set forth in detail in the Commission's April 8, 1959 Report and Order (18 Pike & Fischer, R.R. 1565). There the Commission stated that:

[it] has been concerned for some time about the continuously mounting backlog of applications for new or major changes in standard broadcast facilities and the time elapsing between the filing of such applications and Commission action thereon by either grant or designation



for hearing. The number of pending applications has reached an all-time high, and applicants must now expect to wait from seven months to a year for action on their applications after filing. During the past year the rate of filing has increased substantially and there is no reason to believe that there will be any significant decrease in the near future. Despite the assignment of more engineers to the processing line and the improvement of processing techniques, we are faced with the possibility that the application backlog will even exceed its present size and that even greater delay will ensue before applications can be acted upon unless additional steps are taken to meet the problem at this time. (id. at 1565).

Briefly, prior to these amendments, the Commission's "cut-off" rules (Sections 1.106(b)(1) and 1.361(b)) entitled an application to consideration with a prior-filed application provided it was tendered for filing not later than the day before the prior-filed application was granted or designated for hearing, pursuant to Section 309(b) of the Act. Because of this procedure, it was not unusual that an application, which had been completely processed and was on the threshold of a grant or designation for hearing, had to be reprocessed in view of a conflicting newly-filed application or applications.

The April 9, 1959 amendments altered this procedure by providing, in substance, that no application would be considered or consolidated for hearing with a previously filed application or applications unless filed by the day preceding the date designed by public notice as the day any one of the previously filed applications would be available

and ready for processing. Furthermore, Section 1.106(b) (4) provides that any mutually exclusive application, which is not substantially complete and filed after the "cut-off" date, will be dismissed without prejudice and will be eligible for filing only after a decision is rendered by the Commission with respect to the prior-filed application or applications. It was pursuant to this latter provision that the Commission dismissed the untimely-filed Cabrillo application.

Additionally, amended Section 1.354(c) authorizes the Commission's Broadcast Bureau to group together for processing, applications which involve interference conflicts where it appears that they must be designated for hearing in a consolidated proceeding. Finally, amended Section 1.361(b) provides that the Commission will not consider any application as being mutually exclusive or in conflict with an application under consideration unless such other application was tendered for filing by the day preceding the day designated by public notice in the Federal Register as the day the application under consideration is available and ready for processing.

It was the Commission's prior "cut-off" rules which were contributing to this mounting backlog of applications, since they permitted the filing of new conflicting applications, or the amendment of existing applications, at any time prior to the Commission's taking action on the principal application, thereby requiring constant reprocessing without finality.



Thus, as the Commission stated in its Report and Order promulgating the new "cut-off" rules:

...each amendment affecting radiation, however minor, requires further study to determine whether new conflicts have been created or some existing conflicts may have been resolved. As an example, during a recent 30-day period more than 300 applications were at least partially processed by the engineering staff to determine the effect of amendments or new filings on interference conditions. During the same period only 33 applications were placed on the Commission's agenda, and, more significantly, although not a single application was removed from the top of the processing line, the number of applications under study increased because of grouping additional applications with those already under study. (18 Pike & Fischer, R.R. 1565, 1566).

The situation outlined above became so critical that unless the Commission immediately devised a new procedure, the long chain of applications threatened to paralyze the processing line, thereby preventing the Commission from fulfilling the statutory mandate contained in Section 1 of the Communications Act (47 U.S.C. 151). It was in the face of this urgent situation that the Commission adopted the new "cut-off" rules. There is therefore no basis for any contention, such as Cabrillo attempts to make, that the amended "cut-off" rules "had no reasonable relationship to the protection of the Commission's administrative process." (Br. 23) On the contrary, as we have just shown, the Commission quite properly considered that the adoption of the amendments, in view of the then existing circumstances relating to the processing of standard broadcast applications, was imperatively required in the public interest.



C. The Amended Rules Do Not Violate  
The Principle Of The Ashbacker Case.

Finally, Cabrillo's challenge to the validity of the Commission's "cut-off" procedure does not fare better insofar as it relies on the claim that the amended "cut-off" rules deprive applicants of their Ashbacker rights to comparative consideration. Clearly, the effect of the rules barring late-filed applicants from consolidation with those designated for hearing on a particular "cut-off" date, violates neither the letter nor the spirit of the Ashbacker case. The Ashbacker case stands for the proposition that where two timely filed mutually exclusive applications are pending before the Commission, they must be afforded a comparative hearing, for it would be unfair and contrary to the intent of Congress to grant one and then designate the other for hearing. There was no suggestion in the Supreme Court's decision in the Ashbacker case, however, that the Commission was precluded from fixing a date subsequent to which it would not afford an application comparative consideration with a conflicting application or applications filed prior to the fixed date. On the contrary, the Court stressed that both of the applications for construction permits in Ashbacker were properly before the Commission before action was taken on either, and that no regulation then existed requiring "an application for a frequency, previously applied for, to be filed within a certain date." 326 U.S. 327 at 333, n.9.

Since the Ashbacker case, this Court, in several cases, has rejected efforts to expand the rule enunciated by the Supreme Court to cover situations where allegedly mutually exclusive applications are not, in fact, before the Commission in the same status. See KFAB Broadcasting Co. v. Federal Communications Commission, 85 U.S. App. D.C. 160, 177 F. 2d 40 (1949); United Detroit Theaters Corp. v. Federal Communications Commission, 88 U.S. App. D.C. 239, 178 F. 2d 700 (1949); Community Telecasting Co. v. Federal Communications Commission, 103 U.S. App. D.C. 139, 255 F. 2d 891 (1956); Mass Communicators, Inc. v. Federal Communications Commission, 105 U.S. App. D.C. 277, 266 F. 2d 681 (1959), cert. den. 361 U.S. 828; Plains Television Corp. v. Federal Communications Commission, \_\_\_ U.S. App. D. C. \_\_\_, 278 F. 2d 854 (1960). While none of these cases present the particular problem involved here, they all reflect the "well-established rule that a late-filing applicant is not entitled to a comparative hearing." Federal Broadcasting System v. Federal Communications Commission, 96 U.S. App. D.C. 260, 268, 225 F. 2d 560, 568 (1955), cert. den. 350 U.S. 923. To hold otherwise would be to vest a legal right in a late-filed applicant, entitling him to comparative consideration with a timely-filed competing application, thereby delaying expeditious disposition of the timely-filed application. Cf. Federal Communications Commission v. WJR The Goodwill Station, Inc., 337 U.S. 265, 281 283 (1949). We know of no rule of law which requires a result so antipathetic to the public interest.



II. THE RETURN OF THE ORIGINAL CABRILLO APPLICATION AS NOT BEING SUBSTANTIALLY COMPLETE, PURSUANT TO SECTION 1.306(a) OF THE COMMISSION'S RULES, WAS PROPER AND VALID.

Separate and apart from its contentions as to the validity of the new "cut-off" rules, Cabrillo argues in its brief (pp. 8-12, 14-21) that its original application, tendered for filing on April 20, 1959, should not have been returned by the Commission because the application not only "met all the essential [jurisdictional] requirements under the Communications Act" (Br. 8), but also the "guideposts upon which the Commission is to consider an application" (Br. 9) provided by Section 308(b) of the Communications Act, 47 U.S.C. 308(b). It contends, therefore that, such allegedly being the case, the Commission was required to "follow the requirements of Section 309(b)<sup>4</sup> which has no provision for the 'return' of an application but only for its grant or denial." (Br. 10).

It should be noted, at the outset, that Section 308(b) of the Act provides that:

All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with

<sup>4</sup> / 47 U.S.C. 309(b). Section 309(b) was amended by Public Law 86-572, Section 4, effective December 12, 1960. It is the former Section 309(b) which pertains here.



which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require.

The Commission has, accordingly, promulgated and published in the Federal Register regulations (Sections 1.322, 47 CFR 1.322) consisting of various application forms calling for specific and detailed information from applicants for authorization to operate communication facilities.

Concededly, if Cabrillo's original application met the requirements of Section 308(b), as implemented by the requirements of the Commission's application form (FCC Form 301), it was entitled to treatment under the procedure set forth in former Section 309(b) of the Act.

However, that is not the question posed in this case. The issue before the Court in this regard is whether the Commission, in returning Cabrillo's original application as being not substantially complete, pursuant to Section 1.306(a) of its Rules (see n. 1 supra), erred in concluding that "collectively" the application lacked the basic requirements of Section 308(b) of the Act, as implemented by the Commission's application form, so that Cabrillo was not entitled to notice under Section 309(b) of the Act before its application was returned. In the instant case, the Commission found that the Cabrillo original application was deficient in the various respects enumerated (see Counterstatement of the Case,

pp. 5-6, supra), and was therefore not sufficiently complete to warrant further consideration on the merits (R. 116). It was of the view that: "Where the basic requirements of an 'application' are not submitted, the applicant is not entitled to notice under Section 309(b) before the return of said application." (R. 117).

In short, it is clear that the statutory scheme of the Communications Act, contemplated by Congress, envisaged that an applicant must first satisfactorily "hurdle" the informational requirements of Section 308(b), before he is entitled to the procedural rights afforded by Section 309(b) to be advised of the "grounds and reasons" militating against a finding that grant without hearing of his application would serve the public interest.

On the question of "substantial completeness", Cabrillo implicitly concedes that an application is substantially incomplete when it is lacking in major respects (Br. 16). However, in view of the Commission's conclusion that the various deficiencies of Cabrillo's original application, "when considered collectively, made the application incomplete" (R. 116), Cabrillo argues that there is no case precedent for such a holding of the Commission (Br. 16).

Initially, it should be pointed out that this contention ignores the Commission precedents cited in the Commission's Opinion and Order (R. 116). Secondly, even the absence of such precedents would certainly not preclude the Commission

from returning an application which contained a number of deficiencies, each minor in nature, but which, taken collectively, in its judgment was such as to render the application as a whole seriously defective or substantially incomplete. Not only do the Commission's Rules (see Section 1.306, et seq.) specifically provide that the Commission may return such defective applications, but the very application form itself (FCC Form 301) cautions the applicant - in bold and capitalized print on the first page thereof - that:

BE SURE ALL NECESSARY INFORMATION IS  
FURNISHED AND ALL PARAGRAPHS ARE FULLY  
ANSWERED. IF ANY PORTIONS OF THE APPLICA-  
TION ARE NOT APPLICABLE, SPECIFICALLY SO  
STATE. DEFECTIVE OR INCOMPLETE APPLICA-  
TIONS MAY BE RETURNED WITHOUT CONSIDERATION.  
(Reprinted in appellants' brief, Appendix C,  
p. 1, Item H)

Indeed as the Commission here stated (R. 116): "The Commission's consistent practice has been to return such applications". Accordingly, Cabrillo's claim that there is no precedent for the Commission's action taken here is refuted by the Commission's own Regulations and Application Form, and by those instances where such practice was consistently followed and cited by the Commission in its Opinion and Order here under review.

As for the alleged case precedent to the contrary relied on by Cabrillo, it is clear that each of those cases was dependent upon the particular factual circumstances involved, i.e., the nature of the deficiencies and their



number, etc. Moreover, the return or acceptance of an application which fails fully to comply with lawful Commission regulations is a matter within the discretion of the Commission based upon the particular factual situation presented. Southern Television, Inc., 8 Pike and Fischer, R.R. 872 (1953), WSTV, Inc., 9 Pike and Fischer, R.R. 624 (1953). Thus, the cases relied on by Cabrillo merely show that the Commission, in its discretion, found that in each of those cases, although the applications lacked much to be desired as to completeness, they were nevertheless in the Commission's view found to be substantially complete so as to warrant further consideration on the merits. Such, however, was not the case with reference to the original Cabrillo application.<sup>5/</sup>

In any event, the validity of such an exercise of discretion by the Commission cannot be determined by reliance on a few selected cases, which involve differing combination of deficiencies, qualitatively as well as quantitatively. Suffice it so say that the Commission's rules governing the return of defective applications are applied regularly in the course of its business, involving in each case a judgment as to whether a particular application complies with its rules implementing

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<sup>5/</sup> Despite appellants' attempts to give this Court the impression that its application was "complete" (Br. p. 8, 9, 14), the facts, as we have shown above, and as intervenors more particularly delineate in their brief, are clearly to the contrary.

Section 308(b). Thus, Commission records indicate that of the 1,169 broadcast applications tendered for filing in 1959, 89 were returned to the applicants for non-compliance with the rules; in 1960, 102 applications were returned out of 687 tendered.

In Cabrillo's particular case, the Commission found that its application was insufficient in various respects which, considered collectively, rendered the application incomplete (R. 116). The Commission's conclusion has not been shown by Cabrillo to be incorrect, and certainly not so grievously incorrect as to constitute abuse of its discretion. Accordingly, the Commission's return of the original Cabrillo application, pursuant to Section 1.306(a) of its Rules, must be sustained.

III. THE COMMISSION PROPERLY DISMISSED THE  
RESUBMITTED CABRILLO APPLICATION AS  
UNTIMELY FILED AND ITS REFUSAL TO PERMIT  
NUNC PRO TUNC FILING, IN THE CIRCUMSTANCES,  
WAS A REASONABLE EXERCISE OF ITS DISCRETION.

There is no support in the record for Cabrillo's argument (Br. 12-14) that the Commission unreasonably "delayed" the return of its application and notification of the defects therein, thereby preventing it from resubmitting its application in proper form before the May 15, 1959 "cut-off" date. In its brief (Br. 12), Cabrillo endeavors to create the impression that the Commission deliberately chose to withhold action on its application for a period of 18 days, until May 7, 1959. On the basis of this alleged 18-day inaction on the Commission's part, Cabrillo contends that it "was the sole reason the Radio Cabrillo application was not returned to the Commission before May 15, 1959." (Br. 13). These allegations pose the question whether this 18-day period was so unreasonable as to be arbitrary and contrary to the public interest." (Br. 14).

Initially, it should be noted that when the Commission announced its amendments providing for a new "cut-off" procedure on April 9, 1959, it advised all potential applicants that they "would be well advised to make certain that their applications are in good order before filing, since . . . later amendments may result in delay that could have been avoided." (18 Pike & Fischer, R.R. 1565, 1567). Accordingly, as the Commission here observed, Cabrillo "cannot place the consequences of having submitted a poorly prepared applica-



tion on the Commission, particularly in view of our prior warning to potential applicants that their applications should be in good order before filing." (R. 117).

Secondly, it borders on the specious to contend, as does appellant, that the 18-day period between April 20, 1959, when it submitted its original application, and May 7, when it was returned as substantially incomplete, was unreasonable. Any such charge must, in all good conscience, be judged against the critical situation confronting the Commission in the light of its continuously mounting backlog of applications for broadcast authorizations. The Commission's Report and Order, referred to above, which described in detail the problems of processing applications under the former "cut-off" rules, is adequate refutation of appellants' contentions in this regard. In short, rather than indicating an "uncontrolled, arbitrary method of retaining applications to be processed" (Br. 14), it may more properly be said that the record here indicates that the period of time within which the Cabrillo applications was reached was, in fact, quite expeditious.

As for the claim that the Commission's May 7, 1959 letter to Cabrillo returning its application prevented it from resubmitting its application before the May 15, 1959 "cut-off" date, this result was the direct consequence of Cabrillo's original submission of an inadequate application and not, as we have just shown, the consequence of any undue delay on the Commission's part. To accept appellants' argument (Br. 14) is to propound

the novel and astonishing theory that the obligation is upon the Commission, not upon the applicant, expeditiously to correct deficiencies in his application so that he can make a deadline. Cabri did not resubmit its application until 7 days after the applicable "cut-off", May 15, 1959. Since it conflicted with the Radio Atascadero application, which appeared on the May 15 "cut-off" list, the Commission, under the provisions of Section 1.105(b)(4) of the Rules (see n. 2, supra.), properly dismissed Cabri's application as untimely filed.

In view of all of the foregoing considerations, it is clear that the Commission was fully justified in refusing to exercise its discretion to grant appellant's request to reinstate its application nunc pro tunc. As the Commission indicated in its Opinion, such relief in the past has been permitted only "where it would be consistent with the equities of the particular factual circumstances involved". (R. 117)<sup>6/</sup> The Commission found that since Cabrillo had submitted an incomplete application, despite prior Commission warning of the possible consequences of such submissions, it did not believe that Cabrillo had acquired any equities which would warrant a grant of its request.

<sup>6/</sup> Cf. Johnston Broadcasting Co. v. Federal Communications Commission, 85 U.S. App. D.C. 40, 175 F.2d 351 (1949), where the defect in the application there involved was not brought to the Commission's attention until two years after filing and after the application had been designated for comparative hearing with the mutually exclusive Johnston application. (See appellee's brief in Case No. 9866, pp. 1-2); Accord, City Cabs, Inc. v. Federal Communications Commission, \_\_\_\_ U.S. App. D.C. \_\_\_\_, 275 F.2d 165 (1960).



Moreover, it is clear, from the Commission's discussion in its Report and Order, that Cabrillo's poorly prepared application was the very type of application which gave rise to the problem, and which the amended "cut-off" rules were directly intended to eliminate. In these circumstances, it cannot reasonably be claimed that the Commission was under a duty -- to the prejudice of other properly filed applicants -- to reinstate Cabrillo application nunc pro tunc, thereby affording it comparative consideration with the others.

CONCLUSION

For the foregoing reasons, the Commission's actions of May 7, 1959, returning Cabrillo's original application as substantially incomplete under the Commission's Rules, and its actions of December 22, 1959, returning Cabrillo's resubmitted application as untimely filed under the Commission's "cut-off" rules and, denying Cabrillo's request for reinstatement of its application, nunc pro tunc, should be affirmed.

Respectfully submitted,

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FEDERAL COMMUNICATIONS COMMISSION